Vol. I

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1935

No. 686

FRED O. MORGAN, DOING BUSINESS AS FRED O. MORGAN SHEEP COMMISSION COMPANY, ET AL., APPELLANTS,

vs.

THE UNITED STATES OF AMERICA AND THE SECRETARY OF AGRICULTURE

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF MISSOURI

FILED JANUARY 6, 1936.

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VOL. I

[fol. 1]

IN UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF MISSOURI, WESTERN DIVISION

In Equity. No. 2328. (And Related Cases Nos. 2329-2378, Inc.)

F. O. MORGAN, Doing Business as F. O. Morgan Sheep Commission Company, et al., Petitioners, Plaintiffs and Appellants,

vs.

THE UNITED STATES OF AMERICA and THE SECRETARY OF AGRICULTURE, Defendants and Appellees

[fols. 1a-1e] Citation, in usual form, showing service on Stanley Reed, filed July 11, 1935, omitted in printing.

[fol. 2] PETITION—Filed July 19, 1933

To the Honorable the Judges of the District Court of the United States for the Western Division of the Western District of Missouri:

Your petitioner Fred O. Morgan, doing business as Fred O. Morgan Sheep Commission Company, brings this petition in equity against the United States of America and the Secretary of Agriculture of the United States (hereinafter called the "Secretary") for the purpose of suspending, enjoining and annulling a certain purported order of said Secretary dated the 14th day of June, 1933, in a proceeding pending before said Secretary entitled Secretary of Agriculture vs. L. B. Andrews, et al., Docket No. 311. For cause of action, petitioner alleges and shows:

I

Petitioner has its principal office and place of business in Kansas City, Missouri, in the Western Division of [fol. 3] the Western District of Missouri, and is a citizen and resident of the State of Missouri, and a market agency registered with the Secretary of Agriculture of the United

States under and pursuant to the provisions of the Packers & Stockyards Act, 1921 (42 Stat. L. 163) engaged in the business of selling or selling and buying livestock for others at the Kansas City Stock Yards located in Kansas City, Missouri, and in Kansas City, Kansas, posted by the Secretary of Agriculture as a public stock yard pursuant to the provisions of said Act.

II

The United States of America and the Secretary of Agriculture are made defendants in this action pursuant to the provisions of said Packers and Stockyards Act, 1921, the Commerce Court Act (36 Stat. L. 539) approved June 18, 1910, and the District Court Jurisdiction Act, being a part of the Urgent Deficiency Appropriations Act (38 Stat. L. 219) approved October 22, 1913, and amendments thereof. The Secretary on the 7th day of April, 1930, issued and caused to be delivered to this petitioner and the other respondents therein named a certain document described as an "Order of Inquiry and Notice of Hearing" entitled "Docket No. 311, Department of Agriculture." This Order and Notice advised this petitioner that an inquiry would be made by the Secretary under the provisions of Title III of the Packers & Stockyards Act, 1921, into the reasonableness and lawfulness of the rates and charges of this petitioner and other respondents therein named (hereinafter referred to as respondents) for stockyard services rendered at the Kansas City Stock Yards, and [fol. 4] that a hearing would be held before an Examiner designated by the Secretary in respect thereto in Kansas City, Missouri. A hearing was subsequently held before one John C. Brooke, purporting to act under and by the authority of the Secretary, and was concluded on February 10, 1931. On the 27th day of March, 1931, oral arguments in respect to the evidence presented at the hearing were had before one R. W. Dunlap, purporting to be the "Acting Secretary of Agriculture," at Washington, D. C., and a brief was subsequently filed on behalf of this petitioner. On May 18, 1932, there was issued by the said R. W. Dunlap, purporting to be the then Secretary of Agriculture, a certain document entitled "Bureau of Animal Industry, Docket No. 311, Proceedings, Findings of Fact, Conclusion and Order." This petitioner, on account

of the abnormally low prices of livestock then obtaining, on the 11th day of May, 1932, filed with the Secretary a Schedule of Rates and Charges for stockyard services rendered by it at the Kansas City Stock Yards, differing in structure and amounts of charges from the Schedule of Rates and Charges in effect at the time the aforesaid Order of Inquiry was made. Petitioner states that said Schedule of Rates and Charges so filed by the petitioner prior to the making of any of the aforesaid orders in said proceeding was not suspended by the Secretary pursuant to the provisions of the Packers and Stockyards Act, 1921, and is now in force and effect. The Schedule is set forth in Paragraph 84 of the Order. On May 26, 1932, this petitioner filed a Petition for Re-hearing and Re-investigation of the matters in said Notice of Inquiry referred to, which was granted by the Secretary on July [fol. 5] 15, 1932. A re-hearing was had at Kansas City, Missouri, commencing on the 6th day of October, 1932, and concluding on the 16th day of November, 1932, before the said John C. Brooke, as Examiner. Thereafter, and on the 24th day of March, 1933, an oral argument upon the evidence presented at said hearing was had before one Rexford G. Tugwell, then purporting to be the Acting Secretary of Agriculture. Subsequently thereto a brief was filed on behalf of this petitioner. Thereafter, and upon the 14th day of June, 1933, there was issued by the Secretary of Agriculture a certain document entitled "Bureau of Animal Industry, Docket No. 311, Proceedings, Findings of Fact, Conclusion and Order,". (hereinafter referred to as the "Order") attached hereto, marked Exhibit "A", and made a part hereof, which said Order is by this action sought to be suspended, enjoined, set aside and annulled. Petitioner states that on the 5th day of July, 1933, there was filed with the Secretary of Agriculture by the petitioner a Petition for Re-investigation and Re-hearing, a copy of which is attached hereto, made a part hereof, and marked Exhibit "B". The Secretary denied said re-hearing on July 6, 1933, and extended the effective date of the Order to July 24, 1933.

III

The Secretary in said Order finds and concludes that the Schedule of Rates and Charges of this petitioner now in

effect contains rates and charges unjust, unreasonable and discriminatory, and said Order prescribes lower and different rates and charges for the specific stockyard serv-
[fol. 6] ices therein described as set out in Paragraph 180 of the Order. Such Schedule of Rates and Charges so set out in said paragraph is required to be filed in tariff form with the Secretary, and no amounts in excess of the rates and charges therein provided are to be collected thereafter by this petitioner for stockyard services rendered by it on and after the 24th day of July, 1933. Petitioner states that failure to comply with the terms and conditions of said Order will subject this petitioner to heavy and severe fines and penalties as provided in said Packers and Stockyards Act, 1921, and in addition thereto, petitioner as a market agency may be subjected to numerous and vexatious suits for recovery of reparation by shippers of livestock to the market agency conducted by this petitioner at said Kansas City Stock Yards.

IV

Petitioner states that the Order is null and void in that this petitioner was denied a full hearing before the Secretary upon the matters and things referred to in the Order of Inquiry as provided for in said Packers and Stockyards Act, 1921, and the enforcement of the Order would take Petitioner's property without due process of law, in violation of the Fifth Amendment of the Constitution of the United States, in that:

(a) The Secretary overruled and denied the request of this petitioner for a separate, individual and independent hearing apart from any other of the respondents named in said Notice of Inquiry to the prejudice of this petitioner.

(b) This petitioner requested at the conclusion of the [fol. 7] hearings held under said Notice of Inquiry before the said John C. Brooke, that said Examiner prepare a tentative report upon the evidence to be presented to the petitioner and the Secretary subject to oral argument as to any exceptions thereto which the petitioner might care to present, so that in this manner a hearing might be had before the Secretary without undue inconvenience to the Secretary, but said request was denied and no tentative report was exhibited to petitioner and no oral argument

upon the issues presented by said Order of Inquiry and the evidence taken by said Examiner was at any time had before the Secretary.

(c) The Secretary, without warrant or authority of law, delegated to the said R. W. Dunlap and Rexford G. Tugwell, purporting to be at the times hereinbefore named Acting Secretaries of Agriculture, authorities and powers vested solely in the Secretary involving the exercise of discretion and the determination of issues in respect to the justice, reasonableness and lawfulness of the rates and charges of this petitioner. At each and all of the times hereinabove referred to, when the said oral arguments were presented after the original hearing in said proceeding and after the re-hearing thereof, the then Secretary of Agriculture was in Washington, D. C., at his office in the Department of Agriculture, and at said time was neither sick, absent, nor from any other cause disabled in the performance of official duties of said Secretary of Agriculture, and a purported appointment of any other person as Acting Secretary of Agriculture was illegal, null and void under the laws of the United States.

[fol. 8] (d) Petitioner states on information and belief, and, therefore, alleges the fact to be, that the Secretary at the time said Order was signed by him had not personally heard or read any of the evidence presented at any hearing in connection with this proceeding and had not heard or considered oral arguments relating thereto submitted on behalf of this petitioner and had read or considered any briefs submitted by petitioner in this proceeding, but that the sole information of said Secretary with respect to said proceeding was derived from consultation with employees in the Department of Agriculture, out of the presence of this petitioner or any representative of this petitioner.

By reason of each and all of the foregoing facts, petitioners avers that said course of action so taken by the Secretary was without warrant and authority of law, and by reason of each and all of the acts and omissions in this paragraph referred to (including the denial of petitioner's request for a separate hearing and the overruling of objections) this petitioner has been denied the "full hearing" before the Secretary to which the petitioner is entitled under

said Packers and Stockyards Act, 1921, and under the Constitution of the United States.

V

The conclusions contained in the Order as expressed in said Schedule of Rates and Charges are arbitrary, erroneous and do not constitute a statement of just, reasonable and non-discriminatory rates and charges as required by said Packers and Stockyards Act, 1921, in that they are predicated upon findings of fact set forth in said Order [fol. 9] made without evidence and contrary to all the evidence presented at the hearings, hereinbefore referred to, in the following particulars:

(a) The statement (Paragraph 113) that the respondents in 1931 "in the face of almost universal lower levels in the United States were attempting to maintain their personal and salaries thereof at levels obtaining in the more prosperous year 1929, and that this necessarily had a depressing effect upon the net moneys available to the owners of the respondent" market agencies, as shown by audits, is contrary to the testimony submitted by accountants for both the Government and the respondents. The amount claimed as an element of total costs representative of compensation to workers was less in the year 1931 than in the year 1929 by $403,208.38, or approximately 22% of the total compensation to workers in the year 1929. The selling and buying salaries for all respondents recognized by the Chief Accountant for the Government were less by $231,703.51 in 1931 than in 1929, or a reduction of approximately 30%. All of the evidence showed that the diminution in net moneys available to owners of the respondent market agencies in 1931, as compared with net moneys available to the owners of market agencies in 1929, was due to a reduction of approximately 13% in gross revenues, and by reason of the further fact that respondents were unable to reduce proportionately operating costs, such as rent, utility services, postage, taxes, and other fixed expenditures. Petitioner states that the gross revenue collected by all respondents as selling and buying charges in the year 1932 was less by 24.54% than in the year 1929, and for the [fol. 10] first five months of the year 1933, was less by 18.96% than the revenue collected in the first five months of the year 1932. The reduction in 1933 was due to the

combined effect of lower charges and the reduced volume of business handled.

(b) The Order (Paragraphs 142 and 143) holds that it is reasonable to expect a salesman of cattle and calves to sell efficiently 29,000 head of cattle a year, a salesman of hogs to sell efficiently 85,000 head of hogs a year, and a salesman of sheep to sell efficiently 250,000 head of sheep a year. The Order states that each of the salesmen is presumed, in addition to the actual transaction of the sales, to perform all of the services incidental but necessary to the selling operation customarily performed by these salesmen. These services include the maintenance of contacts with the owners of livestock prior to shipment, appraisal in the country, supervision enroute to market either while on pasture, in feed lots, or at railroad feeding stations, keeping informed as to the changing market conditions, sorting and grading the livestock at the market, consulting with owners of livestock at the market, or advising them of the result of the sales if away from the market, together with such other duties as are usually performed by competent and efficient salesmen. This finding is in conflict with all of the credible and competent evidence in the record. The evidence shows that no salesman employed by any respondent during any year reached or attained such a standard of performance. The average number of head handled per salesman either in the year 1929 or 1931, or any other year, by this petitioner, or by any other of the [fol. 11] 61 respondents mentioned in the proceeding, is shown by the evidence to have been less than the standard set forth by the Order and upon which the costs formulated by the Order are based and predicated.

The actual application of this formula in the year 1931 would have reduced the number of cattle salesmen actually employed in the sale of cattle and calves from 188 to 78.77 men. These salesmen would have been required to sell 2,284,207 head of cattle and calves, making 437,688 separate sales at the rate of 8.9 sales per man in each active selling hour. Each salesman would have realized in net proceeds to owners of cattle and calves $2,161.32 per hour instead of $905.55 per hour. The formula as to hogs reduces the number of hog salesmen actually engaged in 1931 from 50 men to 12.3 men. These men would be required to

sell 1,045,048 hogs and to make 13.48 sales per hour, each realizing an average value of $121.94. The net proceeds of sales per actual selling hour for each salesman would be increased from $470.34, the amount actually returned to users of the service, to $1,913.23. The number of sheep salesmen would be reduced from 16 to 7.59 men. These salesmen would be required to sell 1,896,608 head of sheep in a year, making 9.05 sales per selling hour and actually disposing 400.47 head per selling hour. The net proceeds of sales per salesman returned per hour would be increased from $1,080.02 to $2,134.51.

The evidence at the hearing showed that livestock salesmen, unlike ordinary salesmen, determine the price for the commodity they sell. The formula set and standards determined are not only contrary to all the evidence before [fol. 12] the Secretary, but the accomplishment of the results demanded would involve the complete destruction of the efficiency of the marketing operation, cause tremendous losses to the sellers of livestock, and establish an obstruction in the current of commerce in respect to livestock at the Kansas City Stock Yards of such nature as in and of itself to constitute a violation of the provisions of the Packers and Stockyards Act, 1921.

(c) The finding of the Secretary that the sum of $4,000.00 a year was a reasonable compensation for a cattle salesman, $3,000.00 a year for a hog salesman, and $3,500.00 a year for a sheep salesman, regardless of whether such salesman be an owner or an employee, and irrespective of his relative ability, experience, energy or the time devoted to his work or services incidental thereto, is not based upon any evidence in the record, and is contrary to all of the testimony in the record, which was to the effect that the service value of such salesmen was unlike as a result of individual differences in experience, ability, personality, energy and other characteristics, and that owner salesmen as a class were men of greater skill, ability, experience and energy than employed salesmen. The finding is contrary to the testimony of all witnesses who gave evidence with respect to the amount of compensation to which owner-workers connected with this petitioner and other respondents were reasonably entitled for the services rendered by each of them. The Order, in finding that these witnesses were not particularly qualified to express opinions upon

this subject, disregards all of the evidence in respect to the qualifications of such witnesses.

[fol. 13] (d) The conclusion contained in said Order, to the effect that costs classified as "Business-getting and Maintaining Expenses" were unnecessary and excessive, was without evidence in support thereof and contrary to all of the evidence in the record. The costs so classified included amounts actually expended during the year 1931 by this petitioner and others of the respondents for traveling expenses incident to the appraisal of livestock before sale and supervising the feeding of livestock enroute to market at feeding stations, for advertising, for the preparation, printing and posting of circulars and market reports sent to stockmen; for automobile maintenance and transportation in connection with the rendition of the stockyard services required of petitioner under the Act, and for dues and assessments paid to the Kansas City Live Stock Exchange, a voluntary association, to which this petitioner belongs, for the support of the varied and essential activities of said Exchange. The Order erroneously treats all expenses classified by the Government accountants as "Business-getting and Maintaining Expenses" as expenditures incident to procuring new business through the entertainment of prospective customers and advertising, whereas more than 80% of the expenses so classified by the accountants were in fact expenses incurred in the actual rendition of the stockyard services this respondent is required to render under the Act. The amount of expenses so classified and recognized by the Secretary and covered into the rates established would be insufficient to pay all traveling expenses actually incurred by this petitioner, would leave nothing for the payment of dues and assessments due to [fol. 14] the Kansas City Live Stock Exchange, for the sending out of market circulars and market information to patrons, for any form of advertising, or for the operation of automobiles, or for the entertainment of shippers. The undisputed testimony shows that during the period mentioned in the Order commission rates at Chicago and St. Louis, competitive markets, collected by market agencies at such markets were substantially higher than charges of this petitioner. Despite higher rates during said period, the percentage of livestock originating in the territory tributary to Kansas City marketed at Chicago and St. Louis in-

creased in relative volume. Other undisputed evidence discloses the intensity of the competitive efforts of packers and others to divert livestock from the Kansas City market. The clear necessity is apparent for greater rather than reduced expenditure of time, effort and money by this petitioner in getting and maintaining business. The effect of the Order, therefore, in eliminating expenditures for business-getting would be to increase rather than decrease unit operating costs of this petitioner.

VI

Petitioner states that the conclusions expressed in said Order and upon which the Schedule of Rates and Charges for stockyard services contained therein is based and predicated, are arbitrary, inaccurate and erroneous for the reason that relevant facts appearing from the undisputed evidence taken at the hearings were ignored in the Findings of Fact set forth in the Order in the following particulars:

[fol. 15] (a) The evidence showed conclusively that the Schedule of Rates and Charges first placed under inquiry and higher in amount by more than 10% than the rates and charges found to be unjust and unreasonable by the Secretary, was established after hearing and investigation by the then Secretary as a just, reasonable and non-discriminatory Schedule of Rates and Charges under conditions much more favorable to petitioner from the standpoint of both gross and operating net income than the conditions existing in 1929 or subsequent thereto or which may be reasonably expected to exist during the period in which the Order may be effective. It was also shown that the rates and charges under inquiry expressed in percentage of net sales proceeds handled were less than 2% thereof and less on a sales percentage basis than the rates and charges in effect at the Kansas City Stock Yards by market agencies during the period of the greatest growth and development of the livestock market at Kansas City. Such rates were also shown to be less than the charges for commission or brokerage service for selling any other agricultural product, although livestock, due to its perishable nature and other characteristics, and variability in quality and price, involves a greater expenditure of time, effort and professional skill on the part of the selling agencies than any other

of such compared agricultural commodities. The evidence showed that the value to the user of the service of increased efficiency in the selling service amounts to many times the total of all marketing costs. During the period of the World War and from 1913 to 1919, these rates were increased by only 10%, whereas increases occurred of approximately [fol. 16] 200% in cost of living, farm wages, general hourly wages, livestock prices, packing costs, and meat retailing costs and transportation costs, and in brokerage and commission charges affecting other commodities, both agricultural and industrial. The Order in its Findings of Fact or Conclusions does not refer to or consider any of the above evidence, and is erroneous and prejudicial to petitioner in that it failed to give cognizance to the value of the services rendered in determining the amount of just and reasonable rates and charges.

(b) The Order, in Paragraph 129 thereof, states that the Packers and Stockyards Act, 1921, does not clothe the Secretary with authority to determine how many agencies would be required to handle business at the Kansas City Stock Yards properly, but fails to give consideration or weight to the undisputed testimony taken from the official records on file in the office of the Secretary of Agriculture disclosing that the Secretary since 1921 has registered as market agencies at the Kansas City Stock Yards, as competitors of this respondent, applicants for registration who have previously been expelled from membership in the Kansas City Live Stock Exchange for confessed misapplication and embezzlement of the proceeds of the sale of livestock, and has compelled, through court proceedings, the said Exchange and this respondent to extend to such registrants and to many other registrants all of the market facilities of said Exchange, including the use of the Clearing House, participation in the blanket fire insurance policy [fol. 17] maintained by the Exchange, the hog dockage and inspection service, and other services operated by the Exchange.

(c) The Order failed also to give weight or consideration to the undisputed evidence showing that under rules and regulations of the Kansas City Live Stock Exchange, this respondent and other respondents adopted all reasonable means of promoting economies of operation and reducing expenditures incident to the getting and maintenance of

business. The extent, amount and nature of these restrictions upon the solicitation of business were shown by the evidence to have been previously recognized by the Secretary through participation in a Market Practice Agreement relating to the transaction of business by market agencies not affiliated with said Exchange, including agencies organized on the co-operative plan.

(d) The Order predicates the conclusions therein reached upon a finding of fact that the demand for livestock at Kansas City, particularly for hogs, is greater than the supply of livestock at the public market. It sets forth the increasingly large number of hogs received by packers direct at their plants through private stockyard operations during the period from 1921 to August, 1932, but fails to mention or give weight to other important and relevant evidence in the record. This evidence shows that such purchases of livestock as were made at private stockyards by such packers were consummated with the aid of and upon the basis of market prices determined on the date of purchase as to hogs at the Kansas City Stock Yards by and through the efforts of this and others of the respondents, and that [fol. 18] the continuance of such private stockyard operation by said packers was dependent upon the existence of a public price-determining livestock market. This enabled these packers to acquire livestock without contributing proportionately to the cost of the maintenance of said public market. It was further shown that these packers pursued unfair competitive methods and practices in connection with acquiring receipts of livestock through said operations; and that the effect of this situation was not only to reduce the gross revenue of this respondent due to the diminution in volume of hogs and other livestock sold and bought, but also to increase the variability from day to day in amount of livestock marketed.

(e) Although the Order contains a finding of fact stating that livestock tends to move from producers to consumers by the most economical route, it fails to mention or refer to the other relevant and undisputed testimony in the record showing that in the early part of the year 1932 the railroads centering at Kansas City established freight rate differentials and market privileges favoring the use of railroad stockyards in the vicinity of Kansas City, Missouri, amounting to many times the total marketing costs

in livestock handled at the Kansas City Stock Yards, and that such freight rate differentials have diverted livestock from the Kansas City Stock Yards, and will in the future tend to limit and reduce the volume of livestock sold or handled by this petitioner unless such differentials are abrogated by action of the Interstate Commerce Commission now being sought through a proceeding brought by the Kansas City Live Stock Exchange.

(f) The Order failed to give weight or consideration to [fol. 19] the undisputed evidence disclosing operating conditions at Kansas City creating higher market agency operating costs than others of the five leading competitive markets referred to in said Order and which were shown to have higher rates and charges in force and effect than those under inquiry or described as reasonable by said Order. The evidence showed a greater variability in the volume of receipts from day to day of livestock at Kansas City, greater diversity in grades of livestock received, delivery of trucked-in livestock to market agencies at unloading chutes instead of at pens assigned to agencies as at other markets, a greater area from which receipts are drawn, a larger proportion of stocker and feeder cattle handled, necessitating double contacts with sellers in the West and Southwestern portions of the country and buyers in the Central and Eastern portions of the United States, all of which increased the expenditure of effort and money necessary in connection with the efficient operation of the business of this petitioner and other respondents as compared with conditions existing upon other markets. The evidence showed that peak receipts by month or week in Kansas City were equal in volume as to cattle and calves to the peak receipts by month or week in Chicago although the average volume at Kansas City was only 50% of the average volume for the year in Chicago. The Order ignored the effect of variability of volume in creating stand-by expense and increasing unit operating costs.

VII

Petitioner states that the Order is based on erroneous [fol. 20] conceptions of established rules of law and, therefore, the rates and charges provided therein are unlawful and void for the following reasons:

(a) The "functional unit costs" allegedly reasonable set forth in said Order in no instance have a counterpart in the actual experience of any one of the sixty-one respondents named in said proceeding. These theoretical unit costs fixed by the Order when applied to the 1931 volume of all respondents, including this petitioner, save the two co-operatively-organized market agencies, produce an aggregate supposititious handling cost, including return on investment, which is $607,321.32 less than the aggregate costs found to exist in the actual operation of the business by the petitioner's accountant, and $422,071.95 less than the aggregate costs and expenses recognized by the Government's Chief Accountant to have been encountered by these agencies in the actual rendition of stockyard services. The costs and expenses recognized by the Government's accountant (R. Exhibit 115) include no expenses incident to bad debts, refused purchases, interest paid, errors in accounting, donations to Community Chests, or reserve to meet uninsurable hazard ... no allowance for profits. After these eliminations, the costs recognized by Government accountants are as to all the respondents in the proceeding, including the two co-operatively-organized agencies, $459,200.73 in excess of the total cost fixed as reasonable by the Order. The complete lack of comparability between the unit functional costs and the total costs expressed in the Order and shown in evidence as applied to the fifty-nine respondents except the two co-operatives, is [fol. 21] demonstrated and shown on the statement herewith filed, made a part hereof, and marked Exhibit "C".

The separation of so-called species costs into functional costs, as for selling, yarding, office work, administration, business-getting, etc., was wholly arbitrary and not based on any natural segregations incident to the actual performance of these functions inasmuch as the same personnel and the same facilities were used very largely to perform all of these functions by petitioner and other respondents. These arbitrary bases of apportionment varied widely from the facts and were based wholly upon the judgment of the person who accomplished the segregation. The testimony of all accountants was to the effect that while aggregate operating costs could be stated with a fair degree of accuracy, functional costs were erroneous to the extent that the arbitrary and hypothetical bases of apportionment or segregation were unsound. The cost finding process in the

Order then proceeds to eliminate from these disintegrated or functional costs the portions thereof represented by salesmen's and buyers' compensation and business-getting and maintaining costs, and to substitute therefor arbitrary amounts representing but a small fraction of amounts eliminated. These disintegrated functional costs are then reintegrated on purely an arbitrary or judgment basis. The process employed served to bring about a magnification of errors inherent in the original functional cost separation. The reintegration process ignored the practical situation confronting this petitioner and other market agencies in that such agencies are compelled to operate as independent units handling all species in all kinds and sizes of [fol. 22] consignments. The selling costs are found to be unusually low in the case of agencies that have relatively high unit costs in respect to those expenses classified as business-getting and maintaining expenses. These functional costs were considered separately in the rate-making process used in the Order and, therefore, the connection between low selling costs and relatively high business-getting costs in some agencies was lost sight of and received no consideration in the formulation of total costs. Under this procedure, hypothesis rests upon hypothesis and conjecture is piled upon conjecture, to the end that the final result reached bears no resemblance whatever to the facts of the situation as shown by the evidence to exist. Neither the agencies handling average volume, nor any other agency, or class of agencies, including this petitioner, find their functional costs as set out within the range of the total unit cost denominated as reasonable by the Order. The result is an Order, as hereinafter stated, confiscatory of the property and livelihood of this petitioner, and evidences an erroneous conception and application of established rules of law and a complete disregard of all the cardinal principles of sound accounting and cost finding.

(b) The Order purports to allow, in Paragraphs 159 to 163, inclusive, reasonable costs per head to cover compensation for management. Said costs as allowed are, in fact, unjust, unreasonable, non-compensatory and non-reimbursible of expenses in good faith incurred by petitioner in that the bases stated for the calculation therefor in Paragraph 159 is the ascertained cost of management of the two co-operative respondent market agencies. Under all the evi-

[fol. 23] dence, the costs sustained by such agencies are not comparable with the necessary costs incident to the management of this petitioner's business by reason of the fact that the amount so stated applies to conditions and expenses of management dissimilar and noncomparable with those confronting this petitioner and all others of the respondents except said two co-operatively-organized concerns. This evidence shows that such co-operative associations are managed by their several Boards of Directors, no allowance for whose time and expenditures is included in the amount set out as basic in said Order, and receive in addition assistance from public employes in connection with matters affecting management, including employes of the Department of Agriculture, both in and out of Washington, D. C., the expense of which is not included in the amount stated or estimated by said Order. The statement contained in Paragraph 159 of said Order, to the effect that reasonable rates "should provide also a per head profit, that is, compensation for management and the carrying of uninsurable risks", is based upon an erroneous conception of law in that fair compensation for management and expenses incident to carrying uninsurable risks does not constitute profit, but constitutes, and is, expense. The Order in purporting to allow in the ascertainment of per head costs, for reasonable profits or margin of profits in respect to selling or buying each species of livestock, yet failing so to do, is inconsistent and erroneous.

(c) The Order erroneously failed to allow as an element and part of the capital of this petitioner and upon which a [fol. 24] return is allowed by said Order, any amount representative of going concern value as shown to exist by the evidence taken at the hearing. The Order holds that a rate of return of 6% on fixed capital and 7% on working capital used by petitioner was reasonable and allows that amount only in calculating the gross return recognized by the Order and covered into the rates and charges established. The total return on invested capital for fifty-nine of the respondents, except co-operatives, amounts to $49,164.88, whereas this petitioner and other respondents, in accordance with their respective use and employment of capital, were lawfully entitled to a return thereon of not less than $59,719.21. The Order is in conflict with the uncontradicted testimony of many witnesses, including expe-

rienced bankers and others familiar with financing market agency operation, to the effect that interest rates in excess of 8% per annum were reasonable and necessary in order to induce the investment of capital in the maintenance of the business of market agencies under the conditions existing in 1931 at the Kansas City Stock Yards.

(d) The Order erroneously fails to allow, as an element of the reasonable cost of operations of this petitioner and other respondents, expenses incident to obtaining insurance against normal risks and hazards encountered in the business, including insurance partially indemnifying the respondents against loss by reason of the liability imposed on respondents on account of the guaranty of title undertaken by respondents upon the sale and disposition of live-[fol. 25] stock. As to the fifty-nine respondents, except cooperatives, engaged in selling operations, the Order fails to recognize costs in this category aggregating $19,918.63 found to exist by the Government accountants and $11,245.60 found to exist by respondents' accountant.

(e) The Order, in disallowing as elements of reasonable cost and failing to cover into the rates and charges prescribed traveling expenses, dues and assessments necessary to the support of the Kansas City Live Stock Exchange, advertising expense, losses inevitably incident to errors in accounting processes, losses incident to insurable and uninsurable hazards, moneys expended for donations to the Community Chests maintained by the Chambers of Commerce in Kansas City, Missouri, and Kansas City, Kansas, losses incident to bank failures affecting the collection of items or remission of proceeds, amounts actually expended in the employment of salesmen necessary to efficiently handle and transact the stockyard services rendered, invades the right and authority of this petitioner to manage and conduct its own business inasmuch as all of such expenditures were actually made in good faith in the sound exercise of the best business judgment of petitioner developed as a result of practical experience of many years in the operation of a market agency at the Kansas City Stock Yards.

(f) The effect of the Schedule of Rates and Charges is to permit increases in rates to "dealers" registered under

the Packers and Stockyards Act, 1921, and to permit increases in the rates and charges for buying livestock. Such [fol. 26] rates are shown by all the evidence in the record to apply to stockyard services, the relative cost of which as compared with selling service does not justify such increases and the increases allowed are not collectible or realizable by this petitioner in the actual and practical conduct of its business. The effect of said Order is to increase buying rates to an extent approximately 40% in excess of the rates and charges for similar buying services of market agencies at Chicago, and establish as reasonable rates approximately 40% less than the rates for selling services at Chicago. An increase is permitted of approximately 40% in the present rates and charges for selling services rendered for "dealers." The rates so stated representing increases are merely "paper" rates and are not predicated on any fair consideration of the record or upon any cost accounting developed by the Order or evidence. An application of such rates to business handled by petitioner under existing circumstances would be impossible without petitioner encountering greater loss than gain. In the calculations contained in this petition as to the yield of the rates prescribed, these increases are not included. In such respects the said Order represents an unwarranted, injudicious and prejudicial attempt, without evidence, to readjust rates. The buying and dealers' rates so established are discriminatory and prejudicial, and if put in effect would create an obstruction to the flow of livestock in commerce at said stock yards in violation of the Packers and Stockyards Act, 1921.

VIII

The Schedule of Rates and Charges prescribed by the [fol. 27] Order is confiscatory as to this petitioner and takes the property of petitioner without due process of law in violation of the Fifth Amendment of the Constitution of the United States in that:

(a) The gross revenue which would have been received by petitioner in the year 1931 if said Schedule of Rates and Charges had been in force and effect would have amounted to $4623.96 less than the total calculable costs incurred by petitioner in the rendition of stockyard services (R. Ex-

hibit 207), and in that amount and to that extent the enforcement of the Order would wrongfully and unlawfully confiscate the property of this petitioner.

The confiscatory effect of the Schedule of Rates and Charges prescribed if presently applied to the business of petitioner would be further enhanced by reason of reduction in the gross revenue of petitioner due to diminution in volume of business handled. The gross yield to petitioner of the rates and charges collected was less in 1932 by 70% than the revenues received in 1931, and for the first five months of 1933 less by 5% than during the first five months of 1932. As applied to business of petitioner, the said Schedule of Rates and Charges would cause a further reduction in revenue in respect to cattle and calves of not less than —%, in respect to hogs of not less than —%, and in respect to sheep of not less than 13.59%.

(b) The gross yield of the rates and charges prescribed if applied in 1931 would have been less in amount than the [fol. 28] total costs of operation of petitioner's business recognized by the Government's Chief Accountant in the Cost Study introduced in evidence (R. Exhibit 115).

The confiscatory character of the Order is further disclosed by the fact that as to twenty out of the sixty-one respondents on the basis of the Government's own costs shown in evidence, which are referred to without prejudice, an operating deficit would be incurred, exclusive of any compensation whatsoever to owners for personal services rendered and any return on capital invested. As to hogs, thirty-nine of the respondents would sustain an operating deficit on the same basis, exclusive of any compensation to owners and return on capital. After allowing the inadequate return on capital provided by the Order, twenty-four of the respondents would sustain a net operating deficit on the basis of the Government's own showing and exclusive of any compensation to owners for personal services rendered. The amount remaining to provide compensation for the personal services of the 136 owners of respondents would provide an average annual total compensation per man of $174.50, or 48¢ per day. On the same basis the total compensation for the personal services rendered by the owners of petitioner would amount to $542.92 whereas the reasonable value thereof as shown by the evidence was $4,000.00 for one owner.

(c) The rates and charges ordered into effect are individually and severally confiscatory as applied separately to calves, yearling cattle, cattle, hogs and sheep, and each and all of said rates will fail to yield to this petitioner a fair and compensatory return for the stockyard services ren-
[fol. 29] dered by petitioner or a return commensurate with the value of the service rendered, and will not be reimbursible to the petitioner of the actual operating expenses necessarily incurred in the rendition of such services.

(d) The Order bases the rates and charges formulated upon the stated assumption that the respondents doing the largest relative volume of business operated their businesses more economically and efficiently than others of the respondents doing a lesser volume of business. On page 39, said Order refers to eleven agencies as having handled more than 50% of the total market volume of livestock at the Kansas City Stock Yards in 1931. The Schedule of Rates and Charges found reasonable by said Order on the basis of costs found to exist by the Government accountants and exclusive of any compensation whatsoever for the personal services rendered by the owners of said respondents, would have lacked $20,670.28 of meeting the inadequate allowance for return on capital investment provided for in the Order. The Order (page 23) mentions the fact that twenty-three agencies, inclusive of the eleven above referred to, handled more than 75% of the market volume as measured by equivalent carlots. The owners of these twenty-three respondents would have received under said rates on the Government's own showing (Exhibit 115) no compensation whatsoever for personal services rendered and a return on capital invested amounting to only 60% of the inadequate return allowed by the Order.

(e) The net operating loss sustained upon the basis of the Government's own cost showing by the two co-operatively organized agencies would have been respectively
[fol. 30] $22,782.76 and $14,346.02.

IX

The Secretary erroneously and improperly overruled and denied the Petition for Re-investigation and Re-hearing (Exhibit "B") filed herewith and made a part hereof. Petitioner states that in and by said Petition for Re-investiga-

tion and Re-Hearing the Secretary was advised that economic changes affecting petitioner of radical and far-reaching character and effect had occurred since the taking of evidence at the hearings hereinbefore referred to and prior to June 14, 1933, the date of said Order, rendering the evidence so taken incomplete, inadequate and misleading as an expression of present or future conditions as to revenues, costs or volume handled by this petitioner. Petitioner re-asserts as grounds for the relief sought in the petition all of the allegations contained in said Petition for Re-investigation and Re-hearing, to the same effect as if fully set out in this petition.

Your petitioner states that the failure on the part of the petitioner to comply with such purported Order of the Secretary may subject petitioner to prosecution and liability for penalties in large amounts as against which liability your petitioner will have no adequate protection at law and may subject it to multifarious and vexatious suits for reparation on the part of various shippers of livestock. Should your petitioner attempt to avoid liability for penal- [fol. 31] ties under duress and publish and establish the rates specified in the Order of said Secretary, petitioner will be required by law to collect such rates, which in many instances will result in reductions in the revenues of your petitioner, and if later on it should be determined that said Order of the Secretary is null and void, your petitioner would be without means of collecting the difference between said rates prescribed by said Secretary and the present rates without multifarious suits and actions at law, impractical in character, against those shippers to whom such reductions apply. Your petitioner will, therefore, unless the said purported Order is suspended, enjoined, set aside and annulled, and if pending final determination whether or not its enforcement is not temporarily stayed and suspended, suffer irreparable injury, for which it would be without adequate remedy or protection at law.

Wherefore, petitioner prays:

(1) That a writ of subpoena issue immediately out of and under the seal of this Court, and be directed to said defendants, the United States of America and the Secretary of Agriculture, requiring said defendants, on a day certain therein to be specified, to be and appear before this Court

and to answer this bill, but not under oath, answer under oath being hereby expressly waived;

(2) That this Court direct that due and proper notice of this petition and proceeding issue and be served forthwith, as prescribed in said Act of October 22, 1913 (28 U. S. C. A., Secs. 41 (28) and 43 to 48, inclusive);

(3) That a court constituted as required by said Act of [fols. 32 & 33] October 22, 1913 (28 U. S. C. A., Sec. 47) be convened and that said court so constituted and convened shall hear this petition upon due and legal notice to defendants;

(4) That upon the filing of this bill, the Judge of this Court shall call to his assistance two other judges, one of whom shall be a Circuit Judge, and that upon three days' notice to defendants, this Court shall enter its order staying and suspending the enforcement, operation or execution of said Order of said Secretary, and each and every part thereof, for sixty days from the date of said Order; and that after five days' notice of the time and place of hearing having been given to defendants, petitioner herein be granted a temporary injunction restraining the Secretary of Agriculture and the United States from enforcement of said Order of June 14, 1933;

(5) That this Court, upon final hearing of this suit, enter a decree herein permanently suspending, enjoining, setting aside and annulling said Order of said Secretary;

(6) That petitioner have and recover of the defendants the proper costs of this suit; and

(7) That the petitioner have such other and further general relief in the premises as may to the Court be deemed just and equitable.

John B. Gage, Solicitor for Petitioner.

Duly sworn to by John B. Gage. Jurat omitted in printing.

[fol. 34] EXHIBIT "A" TO PETITION

UNITED STATES OF AMERICA:

BEFORE THE SECRETARY OF AGRICULTURE, BUREAU OF ANIMAL INDUSTRY

Proceedings, Findings of Fact, Conclusion and Order

Docket No. 311

SECRETARY OF AGRICULTURE

vs.

L. B. ANDREWS, Doing Business as L. B. Andrews Livestock Commission Company; A. B. Bachman, Doing Business as A. B. Bachman Livestock Commission Company; W. N. Baucus and Ira Kimmons, a Partnership Doing Business as Baucus & Company; Charles N. Bird; Charles E. Blount, Doing Business as Charles E. Blount & Company; Frank Boddington, Doing Business as Frank Boddington Livestock Commission Company; Bowles Livestock Commission Company; Burlington Livestock Commission Company; Henry F. Carnes, Doing Business as Henry F. Carnes Livestock Commission Company; Cassidy Southwestern Commission Company; John Clay, F. H. Connor, C. A. Klemen, and J. G. Forrest, a Partnership Doing Business as John Clay & Company; Crider Brothers Commission Company; Warren Cummings, Doing Business as Warren Cummings Livestock Commission Company; W. E. Curtis, Doing Business as W. E. Curtis & Company; Charles Dixon Commission Company; E. R. Corrigan and Karl N. Soeder, a Partnership, Doing Business as Corrigan & Soeder; Drumm Standish Commission Company; Ehrke-Martin Livestock Commission Company; E. W. Elliott and R. K. Swain, a Partnership Doing Business as Elliott, Swain & Company; [fol. 35] Farmers Union Livestock Commission; Farrar, Davis & Campbell Livestock Commission Company; Link Fasken, Doing Business as Link Fasken Commission Company; Gillespie & Jones Livestock Commission Company; W. G. Gladish, Doing Business as Gladish Livestock Commission Company; E. W. Goodson, G. E. Goodson, and O. C. Green, a Partnership Doing Business as

Goodson-Green Company; Norman B. Greer, Doing Business as Greer & Company; O. C. Haggart, John H. Wilson, and Glenn Haggart, a Partnership Doing Business as Haggart, Wilson Livestock Commission Company; W. F. Humphrey, Doing Business as W. F. Humphrey & Company; Inman-Hutton Livestock Commission Company; W. E. Burrus, Doing Business as Interstate Livestock Commission Company; J. G. Jackson; Jefferson-Lowry-Davis Commission Company; W. M. Liggett and Roy K. Sanson, a Partnership Doing Business as Kansas City Livestock Commission Company; Harry Kennaley, Doing Business as Harry Kennaley Commission Company; W. C. Kile, Doing Business as W. C. Kile Livestock Commission Company; H. H. Klecker, Doing Business as Hinie Klecker Sheep Commission Company; E. L. Knight and E. Tice, a Partnership Doing Business as Knight & Tice Sheep Commission Company; Harmon C. Knighton, Doing Business as Ham Knighton Commission Company; S. Kraus; J. M. Laird, G. T. Laird, and H. E. Laird, a Partnership Doing Business as Laird Bros. Livestock Commission Company; Walter G. Land, Doing Business as Walter G. Land Livestock Commission Company; W. M. Leitch Sheep Commission Company; L. Levy; R. H. Lewis and S. H. Flournoy, a [fol. 36] Partnership Doing Business as Lewis-Flournoy Livestock Commission Company; A. E. Long and Robert B. Perry, a Partnership Doing Business as Long-Perry Livestock Commission Company; Martin Bros. & Lee Livestock Commission Company; A. J. Maurer; Grover C. Maxwell, Doing Business as Grover C. Maxwell Commission Company; H. B. Dorsett, Doing Business as M. K. & T. Commission Company; T. S. Moffett, H. M. Baker, and J. M. McLain, a Partnership Doing Business as Moffett Livestock Commission Company; Fred O. Morgan, Doing Business as Fred O. Morgan Commission Company; Jay D. McCormick, Doing Business as Jay D. McCormick Livestock Commission Company; McDonald Livestock Commission Company; Roy W. Nance, Doing Business as Roy W. Nance Livestock Commission Company; National Livestock Commission Company of Kansas City; John M. Nichols, Doing Business as John M. Nichols Livestock Commission Company; E. E. Sutton, Doing Business as O. K. Cattle

Company; W. O. Park; W. H. Peed, Doing Business as W. H. Peed Livestock Commission Company; K. L. Peterson and W. F. Humphrey, a Partnership Doing Business as K. L. Peterson & Company; Bryant Poole, D. L. Dempsey, and James Rutherford, a Partnership Doing Business as Poole-Dempsey-Rutherford Livestock Commission Company; Producers Commission Association; J. M. Ragland, W. B. Storts, and W. L. Burrus, a Partnership Doing Business as Ragland, Storts & Burrus; M. W. Rice and George E. Kirk, a Partnership Doing Business as Rice & Kirk; George P. Robinson and Joe R. Hoover, a Partnership Doing Business as Robinson-Hoover Commission Company; F. W. Banks and C. [fol. 37] A. Rountree, a Partnership Doing Business as Rountree-Banks; Ryan-Robinson Commission Company; Fern O. Sanders, Doing Business as Fern O. Sanders Livestock Commission Company; William M. Schwartz, Joseph M. Nolan, and Laurence Feaman, Jr., a Partnership Doing Business as Schwartz-Feaman-Nolan Company; E. F. Searls, Doing Business as George W. Searls & Son; The Stagner, Pieronnet & Willis Livestock Commission Company; B. C. Stanley, Doing Business as Stanley Commission Company; C. A. Stuart, Doing Business as C. A. Stuart & Company; Swift & Henry Livestock Commission Company; George S. Tamblyn, Doing Business as Tamblyn Commission Company; L. Knop, Henry F. Thies, E. J. Thies, F. W. Thies, and A. C. Thies, a Partnership Doing Business as H. Thies & Sons; Ben L. Welch, Doing Business as Welch Livestock Commission Company; Dan Wester, R. W. Wester, and Joseph Smith, a Partnership Doing Business as Wester Bros. & Smith Commission Company; J. Less White, Doing Business as Less White Livestock Commission Company; Wilson, Egan & Company; Witherspoon Livestock Commission Company; Curtis A. Wood; W. E. Woodford, Doing Business as W. E. Woodford Livestock Commission Company; Ralph W. Wright; Ralph W. Wright and Wm. N. Baucus, Partners, Doing Business as Wright and Baucus Livestock Commission Company; John Clay, F. H. Connor, Alan F. Wilson and Chas. G. Smith, Partners, Doing Business as John Clay and Company; L. E. Tice, Doing Business as Knight & Tice Sheep Commission Company; J. M. Laird and G. T. Laird, Partners,

Doing Business as Laird Bros. Livestock Commission [fol. 38] Company; Walter G. Land and John E. Maze, Partners, Doing Business as Walter G. Land Livestock Commission Company; Charles F. Vieregg and Robert H. Stover, Partners, Doing Business as W. M. Leitch Sheep Commission Company; H. E. Long, Robert B. Perry and B. W. Perry, Partners, Doing Business as Long-Perry Livestock Commission Company; Martin, Blomquist & Lee Commission Company, a Corporation; Grover C. Maxwell and Ben J. Furnish, Partners, Doing Business as Maxwell & Furnish Livestock Commission Company; H. M. Baker, W. C. Bradshaw, Barney Metz and Louize McGrew Moffett, a Partnership, Doing Business as the Moffett Livestock Commission Company; J. M. Ragland, W. B. Storts, and W. L. Burrus, Partners, Doing Business as the Ragland, Storts and Burrus Livestock Commission Company; Laurence Feaman and J. M. Nolan, Partners, Doing Business as Feaman and Nolan; Stuart-Robinson-Hoover Company, a Corporation; J. Less White and O. C. Seamans, a Partnership, Doing Business as the Less White & Seamans Livestock Commission Company; R. W. Wester and Joseph P. Smith, Partners, Doing Business as Wester Bros. & Smith Commission Company; Clay W. Stephenson and T. Ray Graybill, Partners, Doing Business as Graybill and Stephenson; Great Western Order Buying Company, a Corporation; Dave Hamer, Doing Business as Dave Hamer Livestock Commission Company, and Harry Conley, W. H. Cripe and J. Ed Freed, Respondents

Proceedings

1. This is a proceeding under Title III of the Packers and Stockyards Act, 1921, instituted by the Secretary of Agriculture according to his order of April 7, 1930. By this order of inquiry and notice of hearing the Secretary of Agriculture directed that an inquiry be made into the reasonableness and lawfulness of all rates and charges provided in the tariffs of the respondent market agencies at the Kansas City Stockyard, Kansas City, Missouri.

[fol. 39] 2. Said order of inquiry and notice alleged that the respondents were registered and doing business under the Packers and Stockyards Act, 1921, as marget agencies

engaged in the business of buying and/or selling livestock on a commission basis at the Kansas City Stockyard in Kansas City, Missouri, which has been found by the Secretary of Agriculture to be a "stockyard" as that term is defined in Title III of the Act and posted as such; that in accordance with the requirements of said Act respondents had theretofore filed, published, and put into effect a schedule of rates and charges for their services as market agencies as set forth in their tariffs and supplements thereto; that the interest of shippers, producers of livestock who patronize respondent agencies and the public generally require that inquiry be instituted under Title III of the Act for the purpose of determining the reasonableness and lawfulness of the rates and charges of all respondents named therein as set forth in their tariffs and supplements thereto.

3. Notice of such hearing was given to the respondents by serving upon them a copy of said order and notice. Pursuant to this order and notice a hearing was held at Kansas City, Missouri; before an examiner designated by the Secretary of Agriculture and said hearing began on December 3, 1930, and concluded on February 10, 1931. The respondents who were members of the Kansas City Livestock Exchange were present by counsel throughout the hearing. The following respondents were not present by counsel: The Farmers Union Livestock Commission and the Producers Commission Association, whose respective managers entered their appearance at the hearing; E. W. Goodson, G. E. Goodson, and O. C. Green, a partnership doing business as Goodson-Green Company who were succeeded by O. C. Green and Robert Coble, a partnership doing business as Goodson-Green Company; J. G. Jackson; W. O. Park; E. F. Searls doing business as Geo. W. Searls and Son; and Curtis A. Wood. The following respondents had ceased to do business on the Kansas City market at the time the hearing commenced: A. B. Bachman, doing business as A. B. Bachman Livestock Commission Company; Charles N. Bird; S. Kraus; L. Levy; H. B. Dorsett doing business as M. K. and T. Commission Company; Roy W. Nance, doing business as Roy W. Nance Livestock Commission Company; E. E. Sutton, doing business as O. K. Cattle Company; F. W. Banks and C. A. Rountree, a partnership doing business as Rountree-Banks; and W. E. Woodford, doing business as W. E. Woodford Livestock

Commission Company. Certain changes in the organization of the respondents had taken place as follows: Charles E. Blount, doing business as Charles E. Blount and Company, was succeeded by Charles E. Blount and Earnest E. Skaggs, doing business as Blount-Skaggs Company; John Clay, F. H. Conner, C. A. Klemen and J. G. Forrest, a partnership doing business as John Clay and Company, succeeded by John Clay, F. H. Conner, A. F. Wilson and C. G. Smith, a partnership doing business as John Clay and Company; W. M. Liggett and Roy K. Sanson, a partnership doing business as Kansas City Livestock Commission Company, succeeded by W. M. Liggett, doing business as the Kansas City Livestock Commission Company; E. L. Knight and Lawrence E. Tice, a partnership doing business as Knight and Tice Sheep Commission Company, succeeded by Lawrence E. Tice, doing business as Knight and Tice Sheep Commission Company; J. M. Laird, G. T. Laird, and H. E. Laird, a partnership doing business as Laird Brothers Livestock Commission Company, succeeded by J. M. Laird, and G. T. Laird, a partnership doing business as Laird Brothers Livestock Commission Company; W. M. Leitch Sheep Commission Company, succeeded by Charles F. Vieregg and [fol. 40] Robert H. Stover, a partnership doing business as the W. M. Leitch Sheep Commission Company; A. E. Long, and Robert B. Perry, a partnership doing business as Long-Perry Livestock Commission Company, succeeded by A. E. Long, Robert B. Perry, and B. A. Perry, a partnership doing business as Long-Perry Livestock Commission Company; K. L. Peterson and W. F. Humphrey, a partnership doing business as K. L. Peterson and Company, succeeded by K. L. Peterson, doing business as K. L. Peterson and Company. Counsel for respondent market agencies who are members of the Kansas City Livestock Exchange entered appearances for these firms whose organization had been changed.

4. Oral argument was had before the Acting Secretary of Agriculture on March 27, 1931, and respondents' counsel submitted a brief on behalf of the members of the Exchange.

5. On May 18, 1932, the Acting Secretary of Agriculture issued an order directing that on and after thirty (30) days from the date of the order the respondent market

agencies and each of them cease and desist from demanding or collecting for any stockyard service the rate or charge shown therefor in the schedule of rates and charges then on file with the Secretary of Agriculture; that on and after said thirty days neither the respondent market agencies nor any of them should publish, demand or collect any rate or charge for the furnishing of any stockyard service in excess of the rate or charge deemed in said order to be just, reasonable and non-discriminatory for the furnishing of such service; that at least ten days prior to the date on which said order would become effective each and every of the respondent market agencies publish, give notice of, and file with the Secretary of Agriculture, in accordance with the Packers and Stockyards Act, 1921, and the regulations of the Secretary of Agriculture thereunder, a schedule showing all rates and charges for the stockyard services furnished by such respondent at the Kansas City Stockyard, Kansas City, Missouri, and all rules and regulations changing, affecting or determining such rates or charges, and that no rate or charge so shown for any such stockyard services be in excess of the rate or charge determined by said order to be just, reasonable and non-discriminatory for such service. The effective date of the order was thereafter extended to July 18, 1932.

6. On May 26, 1932, many of the respondents filed petitions alleging in detail the general economic changes which had developed in the United States since the year 1929, that being the year of the specific financial experience of respondents which the Secretary had used in the determination of the reasonableness of respondents' rates, and further alleging in detail the particular effect upon the business of such market agency of said general changes, especially with respect to the volume of business handled by each of such market agencies. Each of the petitions prayed that the order of the Acting Secretary of Agriculture, dated May 18, 1932, be withdrawn and that this proceeding be reopened for reinvestigation of the matters and things referred to in the order of inquiry and be set down for further hearing upon the subjects set forth in the aforesaid petitions.

7. On May 11, 1932, and prior to the issuance of the order of May 18, 1932, and the filing of said petitions, each

and every of the petitioning market agencies filed with the Secretary, to become effective May 23, 1932, a schedule showing either expressly or by reference all rates and charges for the stockyard services furnished by such market agencies at the Kansas City Stockyard, Kansas City, [fol. 41] Missouri, each of which schedules has for convenience been designated "Kansas City Livestock Exchange Tariff No. 3", and has been in force and effect since said 23rd day of May, 1932.

8. In view of the decision of the Supreme Court of the United States in the case of Atchison, Topeka & Santa Fe Ry. Co. v. United States, 284 U. S. 248, and of the District Court of the United States for the Western District of Missouri in the case of St. Joseph Stockyards Company v. the United States 58 Fed (2d) 290, the Secretary was of the opinion that it was his duty under the law to reopen this docket and hold a rehearing to the end that all parties in interest might be given opportunity to present such evidence of changes both general and particular as have occurred since the year 1929 and are material to the issues raised by the Order of Inquiry herein, and also to the end that all parties might have opportunity to present such other things as might be material to said issues; and further to the end that a general inquiry might be had into the reasonableness and lawfulness of each and every rate and charge, and each and every rule and regulation affecting any rate or charge stated in said new schedules known as Kansas City Livestock Exchange Tariff No. 3 and in the new schedules filed by the Farmers Union Live Stock Commission and the Producers Commission Association, respectively, on June 10, 1932, as aforesaid, and in any and all schedules of market agencies in effect at said Kansas City Stockyard at the time of the rehearing ordered by the Secretary. Accordingly, the Secretary, by an order dated July 15, 1932, vacated the aforesaid order of May 18, 1932, and directed a rehearing for the purposes aforesaid.

9. The rehearing ordered as above stated was held at the Kansas City Athletic Club Building in Kansas City, Missouri, by adjournment from the Federal Building in said city. The hearing began on the 6th day of October and was concluded on November 16, 1932.

10. By the order of July 15, 1932, granting a rehearing herein, the following additional parties were made respondents in the cause, namely: Ralph W. Wright and Wm. N. Baucus, partners doing business as Wright and Baucus Livestock Commission Company; John Clay, F. H. Connor, Alan F. Wilson and Chas. G. Smith, partners, doing business as John Clay and Company; L. E. Tice, doing business as Knight & Tice Sheep Commission Company; J. M. Laird and G. T. Laird, partners doing business as Laird Bros. Live Stock Commission Company; Walter G. Land and John E. Maze, partners doing business as Walter G. Land Live Stock Commission Company; Charles F. Vieregg and Robert H. Stover, partners doing business as W. M. Leitch Sheep Commission Company; H. E. Long, Robert B. Perry and B. W. Perry, partners doing business as Long-Perry Live Stock Commission Company; Martin, Blomquist & Lee Commission Company, a corporation; Grover C. Maxwell and Ben J. Furnish, partners doing business as Maxwell & Furnish Livestock Commission Company; H. M. Baker, W. C. Bradshaw, Barney Metz, and Louize McGrew Moffett, a partnership doing business as the Moffett Live Stock Commission Company; J. M. Ragland, W. B. Storts, and W. L. Burrus, partners doing business as the Ragland, Storts and Burrus Live Stock Commission Company; Laurence Feaman and J. M. Nolan, partners doing business as Feaman and Nolan; Stuart-Robinson-Hoover Company, a corporation; J. Less White and O. C. Seamans, a partnership, doing business as the Less White & Seamans Live Stock Commission Company; R. W. Wester and Joseph P. Smith, partners, doing business as Wester Bros. & Smith Commission Company; Clay W. Stephenson and T. Ray Graybill, partners, doing business as Graybill and Stephenson; Great Western Order [fol. 42] Buying Company, a corporation; Dave Hamer, doing business as Dave Hamer Live Stock Commission Company; Harry Conley, W. H. Cripe, and J. Ed Freed.

11. At the time of the rehearing in this cause above described, the following respondents were not engaged in business at the Kansas City Stockyard: L. B. Andrews, doing business as L. B. Andrews Live Stock Commission Company; A. B. Bachman, doing business as A. B. Bachman Live Stock Commission Company; Charles N. Bird; Charles E. Blount, doing business as Charles E. Blount & Com-

pany; Gillespie & Jones Live Stock Commission Company; E. W. Goodson, G. E. Goodson, and O. C. Green, a partnership doing business as Goodson-Green Company; W. E. Burrus, doing business as Interstate Live Stock Commission Company; S. Kraus; L. Levy; H. B. Dorsett, doing business as M. K. & T. Commission Company; Roy W. Nance, doing business as Roy W. Nance Live Stock Commission Company; E. E. Sutton, doing business as O. K. Cattle Company; George P. Robinson and Joe R. Hoover, a partnership doing business as Robinson-Hoover Commission Company; F. W. Banks and C. A. Rountree, a partnership doing business as Rountree-Banks; E. F. Searls, doing business as George W. Searls & Son; Curtis A. Wood; W. E. Woodford, doing business as W. E. Woodford Live Stock Commission Company; and Ralph W. Wright.

12. By reason of changes in their organization, the following respondents had at the time of the rehearing herein ceased to engage in business at the Kansas City Stock Yards under the firm name and style under which they were named as parties respondent in this proceeding: W. N. Baucus and Ira Kimmons, a partnership doing business as Baucus and Company; John Clay, F. H. Connor, C. A. Klemen, and J. G. Forrest, a partnership doing business as John Clay & Company; E. L. Knight and E. Tice, a partnership doing business as Knight & Tice Sheep Commission Company; J. M. Laird, G. T. Laird, and H. E. Laird, a partnership doing business as Laird Bros. Live Stock Commission Company; Walter G. Land, doing business as Walter G. Land Live Stock Commission Company; W. M. Leitch Sheep Commission Company; A. E. Long and Robert B. Perry, a partnership doing business as Long-Perry Live Stock Commission Company; Martin Bros. & Lee Live Stock Commission Company; Grover C. Maxwell, doing business as the Grover C. Maxwell Commission Company; T. S. Moffett, H. M. Baker, and J. M. McLain, a partnership doing business as Moffett Live Stock Commission Company; J. M. Ragland, W. B. Storts, and W. L. Burrus, a partnership doing business as Ragland, Storts and Burrus; William M. Schwartz, Joseph M. Nolan, and Laurence Feaman, Jr., a partnership doing business as Schwartz-Feaman-Nolan Company; C. A. Stuart, doing business as C. A. Stuart & Company; J. Less White, doing

business as Less White Live Stock Commission Company; and Dan Wester, R. W. Wester, and Joseph Smith, a partnership doing business as Wester Bros. & Smith Commission Company. Frank Boddington, doing business as the Boddington Live Stock Commission Company, a respondent in this proceeding, died on October 14, 1932.

13. It appears of record that at the rehearing described in paragraph 9 hereof, all respondents were present by counsel except Farmers Union Livestock Commission; J. G. Jackson; McDonald Live Stock Commission Company; W. O. Park; K. L. Peterson, doing business as K. L. Peterson Order Buying Company; Producers Commission Association; M. W. Rice and George E. Kirk, a partnership doing business as Rice & Kirk; Harry Conley; W. H. Cripe; and J. Ed Freed.

[fol. 43] 14. It also appears of record that Farmers Union Live Stock Commission; McDonald Live Stock Commission Company; K. L. Peterson, doing business as K. L. Peterson & Company; Producers Commission Association; Harry Conley; and W. H. Cripe, were duly served with a copy of the aforesaid order granting a rehearing in this cause. It does not appear of record that either J. G. Jackson; W. O. Parke; M. W. Rice and George E. Kirk, a partnership doing business as Rice and Kirk; J. Ed Freed, or any of them, were either present at the rehearing in person or by counsel or were served with a copy of the order granting rehearing herein. However, it does appear that John B. Gage, Esq., Attorney-at-law of Kansas City, Missouri, who appeared for most of the respondents, both at the original and the rehearing, announced at the original hearing that he represented M. W. Rice and George E. Kirk, a partnership doing business as Rice and Kirk, and there is nothing in the record of the rehearing to negative the continuance of such representation except that said record fails to show the inclusion of these respondents in the list of those stated by Mr. Gage as being represented by him.

15. Oral argument on the basis of the record made at the original hearing and at the rehearing was had before the Acting Secretary of Agriculture on March 24, 1933. Respondents' counsel was given until April 15, 1933, to file a brief, and so filed it.

Findings of Fact

Upon careful consideration of the entire record in this proceeding, the following findings of fact and conclusions are made:

I. The Kansas City Livestock Market

16. The Kansas City Stock Yards Company maintains and operates a stockyard at Kansas City, Mo., at which a public market is conducted. This market was established in 1871 and has grown in importance as the production of livestock has expanded and improved in the territory tributary to Kansas City, until it has become one of the leading livestock markets in the United States. A stockyard is a place where producers and others ship their livestock by rail, or by truck, or drive them in on foot, to be offered for sale to the various classes of buyers who resort there to buy the grades and classes of livestock to meet their requirements.

17. The geographical location of the Kansas City market makes it a gateway through which much of the livestock produced in the West and Southwest passes on its way to the feed lots in the Central West and the consuming centers in the East. Considerable numbers of hogs and sheep are sold at the Kansas City Market, but its primary eminence is as a cattle market. It is the largest stocker and feeder cattle market in the world.

[fol. 44] II. Origin of Receipts of Livestock

18. The points of origin of receipts of cattle at the Kansas City market lie principally in the States of Kansas, Nebraska, Colorado, Arizona, New Mexico, Texas, Oklahoma, Arkansas, Missouri and Idaho. The territory in which the drawing power of the Kansas City market is distinctly greater than that of its principal competing central markets is made up of the State of Kansas, the most southerly tier of counties in Nebraska, the counties of southeastern Colorado, those of the eastern half of New Mexico, those of the northern portion of Texas, the State of Oklahoma, the counties of western Arkansas, and those of the most westerly portions of Missouri. The hogs arriving at the Kansas City market originate in a more restricted area

than do the cattle and sheep. The hog territory may be defined generally as the State of Kansas, south central Nebraska, northern Texas, eastern Oklahoma, western Arkansas, and the counties located in the western third of Missouri. The sheep arriving at the Kansas City market originate in a wide area, embracing the State of Kansas, Colorado, New Mexico, Arizona, Texas, Oklahoma, Missouri, and to some extent the far western and northwestern States.

19. Ordinarily, livestock tends to move from the producer to the consumer by that route which is most economical. The trade territory of a market is determined largely by those factors which make it the most economical center to, through, and from which to move the livestock. One of the chief factors delimiting the trade territory of a market is the rate structure of the railroad transportation system which serves it. Generally speaking there is a normal trade territory for a livestock market, and this is true of the Kansas City market. Within this trade territory the Kansas City market comes into competition to a varying extent with other markets for the livestock in the counties and states from which it receives its livestock.

20. The following table gives by species the total number of livestock marketed from the seven states of Kansas, Texas, Oklahoma, Missouri, Nebraska, Colorado, and New Mexico at Kansas City and four of its principal competing central markets, and the percentage of the total marketed at each:

[fol. 45]

Cattle

Year	No. Marketed at 5 Markets	Per Cent Marketed at Kansas City	Per Cent Marketed at Chicago	Per Cent Marketed at Nat. Stkyds.	Per Cent Marketed at Omaha	Per Cent Marketed at St. Joseph
1920	4,864,862	49.5	3.0	14.5	21.4	11.6
1921	4,889,076	49.9	4.3	14.8	20.6	10.4
1922	5,803,333	50.4	3.7	13.9	21.4	10.6
1923	6,170,478	51.2	3.9	14.3	19.9	10.7
1924	6,202,311	48.4	5.0	14.3	21.3	11.0
1925	5,954,228	49.1	4.5	14.5	20.3	11.6
1926	5,778,123	44.7	5.2	16.5	22.6	11.0
1927	4,990,556	46.6	4.8	18.6	19.8	10.2
1928	4,844,510	44.9	5.7	15.5	22.3	11.6
1929	4,834,490	44.4	5.7	15.8	22.6	11.5
1930	4,888,804	44.0	4.9	16.3	23.9	10.9
1931	4,774,019	40.7	6.7	16.8	25.7	10.1

Hogs

Year	No. Marketed at 5 Markets	Per Cent Marketed at Kansas City	Per Cent Marketed at Chicago	Per Cent Marketed at Nat. Stkyds.	Per Cent Marketed at Omaha	Per Cent Marketed at St. Joseph
1920	7,030,618	32.1	0.8	18.9	27.4	20.8
1921	7,253,311	28.6	1.0	22.3	27.9	20.2
1922	8,413,567	28.8	1.6	23.0	26.3	20.3
1923	10,843,476	30.3	1.2	24.0	26.0	18.5
1924	10,400,432	26.3	0.9	24.0	29.9	18.9
1925	7,868,149	24.6	0.9	24.1	32.2	18.2
1926	6,980,344	27.6	0.7	25.8	28.2	17.7
1927	5,897,608	26.4	1.8	32.5	25.1	14.2
1928	8,362,044	28.1	1.1	24.8	27.6	18.4
1929	8,726,396	27.8	1.1	26.3	28.0	16.8
1930	7,995,230	24.9	0.8	25.6	32.1	16.6
1931	6,652,778	19.4	0.8	23.1	39.0	17.7
			Sheep			
1920	3,060,016	47.9	14.7	12.3	7.6	17.5
1921	3,715,856	42.3	22.1	12.2	7.1	16.3
1922	3,327,947	43.6	20.7	13.4	6.7	15.6
1923	3,743,367	38.7	21.8	10.3	11.1	18.1
1924	3,454,973	41.5	17.6	9.6	9.2	22.1
1925	3,355,277	40.0	15.3	10.4	11.2	23.1
1926	3,676,427	43.2	14.3	11.2	9.6	21.7
1927	3,088,669	43.0	16.6	11.1	8.1	21.2
1928	3,736,678	42.6	10.2	8.2	10.8	28.2
1929	3,729,764	42.7	8.2	9.2	11.0	28.9
1930	4,301,577	42.8	11.2	8.7	12.6	24.7
1931	4,540,010	45.8	11.8	10.1	9.6	22.7

[fol. 46] 21. The use of county lines defines trade territory more nearly precisely than does the use of state lines. The record shows for the year 1927 the counties of origin classified on the basis of the comparative drawing power of ten important markets; namely, Kansas City, Omaha, St. Joseph, Sioux City, St. Paul, Denver, Wichita, National Stockyards, Chicago, and Sioux Falls. Those counties which sent to the Kansas City public market a number of head of livestock representing from 75 to 100 percent of the total rail shipments to all these ten markets were placed in one classification, and those counties which sent from 50 to 75 percent to Kansas City in another. Other groupings were made of those counties in which the drawing power of Kansas City as compared with that of other markets was less pronounced. The results of this study of the rail receipts for the year 1927 are given in the following table:

	Total rail arrivals at the Kansas City public market from counties designated by percentage of Kansas City drawing power	The total rail arrivals at ten competitive markets, including Kansas City from these designated counties	The ratio of Kansas City rail arrivals from designated counties to total rail arrivals at the Kansas City public market (expressed as a percentage of the latter)
Cattle and calves			
75% to 100% counties	1,265,656	1,425,234	53.6%
50% to 75% counties	649,677	1,055,786	27.5%
Two combined (77% area)	1,915,333	2,481,020	81.1%
Other counties (22.5% area)	435,042		18.4%
Total receipts	2,350,375		99.5%
Hogs			
75% to 100% counties	578,091	641,599	36.2%
50% to 75% counties	444,568	720,847	27.8%
Two combined (75% area)	1,022,659	1,362,446	64%
Other counties (23% area)	542,695		34%
Total receipts	1,565,354		98%
Sheep			
75% to 100% counties	433,767	469,819	29.3%
50% to 75% counties	466,365	739,901	31.5%
Two combined (74% area)	900,132	1,209,720	60.8%
Other counties (22.5% area)	528,204		35.7%
Total receipts	1,428,336		96.5%

22. Within the trade territory made up of those counties which sent to the Kansas City stockyard from 50% to 100% of the livestock marketed by rail at the ten important markets, producers do not always send their livestock through the central markets. They may ship directly to packers located at Kansas City, packers whose [fol. 47] plants are not located at any central market, and to those located at points farther east. The record does not disclose the extent of sales at the so-called concentration points. It does show the direct purchases of the packers located in greater Kansas City from 1920 to 1931, inclusive, and for the first eight months of 1932. It shows also for 1931 the purchases by packers located away from Kansas City but in the 50% to 100% counties of the states immediately tributary to Kansas City. These purchases were as follows:

	Total	From public stockyards	Direct from country
Cattle	111,767	23,531	88,236
Calves	53,852	6,031	47,821
Hogs	1,934,394	71,160	1,863,234
Sheep	40,134	2,051	38,083

III. Manner of Arrival of Livestock at Market

23. Presently practically all livestock handled by respondents arrives at the Kansas City stockyard either in railroad cars or motor trucks.

24. Until comparatively recently arrivals of livestock were practically exclusively by rail. Formerly it was the custom of one owner to load one species in one or more railroad cars and consign such livestock to a market agency for sale. Under these conditions of transportation and ownership the consignment came to be thought of in terms of the straight car with single ownership and the rates were assessed in terms of cars. In those days multiple car consignments containing livestock of one species and ownership were much more common than at present, such consignments in train loads of 15 or more cars not being infrequent. With the more intensive settlement of the livestock producing territory tributary to Kansas City, with changes in transportation and marketing conditions, the custom arose not only of shipping consignments consisting of fewer cars but also of mixing species within a car and shipping in the same car livestock belonging to different owners. This brought about in the tariffs or schedules of charges rates per head of livestock to be applied to less than a carload of one species.

25. Not all of the cars used by the 13 railroads serving the Kansas City market are of the same length or same weight capacity. Some of the roads use 36-foot cars, others 40-foot cars. The custom has grown up on the part of those railroads using mainly 36-foot cars of furnishing two such cars when a 40-foot car is ordered by a shipper, and billing the two cars as one. The respondent market agencies assess their charges according to the billing. Some of the roads, in order to meet truck competition, have reduced the minimum weight allowable and have reduced their carload rates accordingly.

26. With the development of the motor truck and the construction of hard surfaced and other improved roads

leading from the producing areas to Kansas City, there came [fol. 48] another change in the manner of arrival of livestock at the market, namely, the gradual decrease in the percentage thereof arriving by rail and a corresponding increase in that coming in by truck. The record shows these percentages for each year from 1922 to 1931. It will be observed from the following table that in 1922 only .95 percent of cattle, 5.58 percent of calves, 5.49 percent of hogs, and 7.11 percent of sheep arrived by truck, while in 1931 the corresponding percentages were cattle 11.15 percent, calves 35.16 percent, hogs 51.55 percent, and sheep 13.39 percent.

Year	Cattle		Calves	
	Rail % of Total	Truck % of Total	Rail % of Total	Truck % of Total
1931	88.85	11.15	64.84	35.16
1930	92.19	7.81	72.99	27.01
1929	94.59	5.41	78.21	21.79
1928	96.62	3.38	82.40	17.60
1927	97.64	2.36	84.88	15.12
1926	98.16	1.84	86.34	13.66
1925	98.56	1.44	90.34	9.66
1924	98.93	1.07	92.84	7.16
1923	99.09	.91	93.65	6.35
1922	99.05	.95	94.42	5.58
	Hogs		Sheep	
1931	48.45	51.55	86.61	13.39
1930	60.78	39.22	88.83	11.17
1929	71.37	28.63	89.71	10.29
1928	78.00	22.00	91.99	8.01
1927	83.92	16.08	91.74	8.26
1926	88.45	11.55	93.75	6.25
1925	91.12	8.88	94.46	5.54
1924	93.28	6.72	94.74	5.26
1923	95.42	4.58	94.13	5.87
1922	94.51	5.49	92.89	7.11

The above stated percentages are calculated from the total receipts of livestock by rail and by truck, respectively, as compiled by the Kansas City Stock Yards Company. Those totals contain livestock such as that stopped at Kansas City for feed, water and rest, and that shipped direct to packers through the Kansas City stockyard, neither of which classes is handled by any of the respondents. The record shows the arrivals by rail and by truck, respectively, of the livestock handled by respondents for only the years 1929 and 1931. The following table shows the percentages arriving by rail and by truck, respectively, of the total fresh revenue producing receipts of livestock handled by respondents. By "total fresh revenue producing receipts"

is meant the total livestock on which respondents received commissions, exclusive of livestock bought, livestock handled for dealers, and livestock handled for other market agencies.

[fol. 49]

Year	Cattle		Calves	
	Rail % of Total	Truck % of Total	Rail % of Total	Truck % of Total
1929	94.21	5.79	74.71	25.29
1931	98.43	11.57	58.21	41.79
	Hogs		Sheep	
1929	67.25	32.75	90.77	9.23
1931	38.49	61.51	86.60	13.40

27. Comparison of the above percentages for the years 1929 and 1931 with those contained in the next preceding table indicates that a greater proportion of the livestock handled by respondents arrives by motor truck than is true of the total livestock which passes through the stockyard. Respondents' tariffs have contained for many years per head rates for selling livestock trucked or driven-in to the stockyard. Quite uniformly these rates have exceeded those charged per head for livestock arriving by other modes of transportation.

28. Not only changing modes of arrival but other factors, such as market demand and the customs of buyers, have caused the number of animals per consignment and per draft to decrease. In other words, increasingly respondents' business has taken on more of the aspects of the retail handling of a commodity. These changes have brought with them increasing costs per head of livestock handled, but such costs are included in those hereinafter stated in detail.

29. The foregoing developments caused the great majority of the respondents to reach the conclusion that tariff structures, which had had their inception in the days of the exclusive carload business and which, in spite of some modifications, were still based on the carload as the unit, had ceased to fit the business which respondents were doing. Accordingly, between the time of the first and the last hearing in this proceeding, those respondents filed their Tariff No. 3 which, to a considerable extent, discards the carload as the unit of charge and bases its rates on the

head of livestock of each particular species regardless of the mode by which such livestock arrived at the pens of the respective respondents.

IV. The Facilities of the Market Place

30. The Kansas City Stock Yards is located in Missouri and Kansas in that part of the central industrial district of Kansas City known as the "West Bottoms." The yard is divided into three sections. The west yard lines on the west side of Kansas River and was formerly used as a quarantine yard. The main yard lies on the east side of the Kansas River and includes the cattle, hog, sheep, and horse and mule divisions, in addition to the exchange and show buildings. The north yard lies north of the main yard and is connected with it by an underpass beneath the Union Pacific and Missouri Pacific railroad tracks. With rare exceptions, the buying and selling of livestock are carried on in the main yard.

[fol. 50] 31. The Kansas City market is served by 13 trunk line railroads and by the Kansas City Connecting Railroad, which owns rights-of-way, tracks, and loading and unloading docks and chutes, thus affording adequate transportation facilities in connection with the loading and unloading, receiving and delivering of livestock at the stockyard. It is the terminal carrier which forms the connection between the stockyard and all railroads entering Kansas City.

32. The main yard is generally triangular in shape, the base of the triangle being at the north end of the yard. There are five railroad docks on the west side of the main yard, extending in a north and south direction. Three of these docks lie between the river and the hog house, and two lie between the hog house and the cattle division. These five docks have approxmately 500 unloading chutes.

33. The hog house is a three-story structure, rectangular in shape, extending in a north and south direction between the two sets of railroad docks. The respondent commission firms use the pens on the second floor of the hog house for selling hogs. The ground floor is used for holding cattle which are not delivered to the respondent firms immediately upon arrival, and for holding livestock which is to be

shipped out of the yard. Those respondents who are engaged solely in the business of buying hogs on order use a part of the third floor of the hog house for sorting and preparing livestock for shipment. The remainder of the third floor is used for holding livestock to be delivered to packers, and a part of the roof of the hog house is covered with pens and used for the same purpose. The unloading docks and receiving pens for hogs arriving by truck are located in the north yard. Hogs unloaded there must be driven through the underpass which connects with the main yard at the north end of the hog house.

34. The cattle division lies between railroad dock No. 5 and the public thoroughfare which bounds the yard on the east. This division is not under roof and is on the ground floor. However, the scales are on viaducts, with the exception of two cattle scales which are on the surface in the traders' division. The pens and alleys in the north and, to some extent, the west part of this division are used by traders who buy and sell the different classes of cattle and calves. The commission division of the cattle yard is rectangular in shape, extending in a north and south direction, adjoining part of Dock No. 5 and part of the traders' division on the west. The respondent firms have pens assigned to them in this division, in which cattle and calves are exposed for sale. There are unloading docks and receiving pens at the north end of the main yard where cattle and calves are received from trucks and later driven to the commission division.

35. The sheep barns are located in the southern part of the main yard. There are three of these barns, each being a one-story structure. The unloading docks for drive-in sheep, and the sheep dipping vat are located in this division.

36. The plant and pens used in connection with the immunization of hogs are situated in the southwest corner of the cattle division. The dipping vat and branding chutes for cattle and calves are located in the north yard. There is also a stock hog division in the north yard where stock hogs [fol. 51] may be handled without the necessity of dipping and immunizing, if they are not brought into the main yard. This division is for the purpose of encouraging the movement of stocker and feeder hogs through the public

market. If such hogs are taken to the main yard to be sold or weighed, they must be dipped and immunized in accordance with State and Federal regulations.

37. The Kansas City Stock Yards Co. owns an office building, commonly called the Exchange Building, which is located midway on the east side of the cattle commission division. In addition to housing its own offices in this building, the company leases office space to respondents and others having business at the market. Opposite the Exchange Building and on the west side of this division is the train office building where the records of incoming and outgoing shipments are made. It is a sort of clearing house for the detailed information relative to the movement of livestock to and from the market.

38. Livestock arriving at the Kansas City market by rail is unloaded by employees of the stockyard company, which acts as agent for the carriers, who pay the company for this service. The loading and unloading facilities of the Kansas City Connecting Railroad are connected with an extensive system of viaducts, alleys, stock drives, subways, and bridges, which afford adequate facilities for receiving and distributing livestock to all parts of the stockyard.

39. In each division of the yard adequate scale facilities are provided by the stockyard company. There are three scales in the sheep division, one of which is designed for weighing truck consignments. There are 14 scales in the cattle commission division. These scales, the sorting and catch pens, and alleys used in connection therewith, are elevated above the pens and alleys on the ground level. They are reached by inclines and viaducts. These scales are arranged in pairs, one scale in each pair being called the "high line" scale and used for weighing drafts of 10 head or more, and the other the "jack pot" scale and used for weighing small drafts. At the west side of the cattle yard there is a small scale maintained for the purpose of weighing crippled hogs. There are five scales maintained in the hog commission division on the second floor of the hog house.

40. Upon the arrival of livestock by rail at the stockyard a waybill, representing each carload, is delivered by an employee of the railroad company to employees of the

stockyard company. Information as to the dock number, the time at which the train is set, names of consignor and consignee, the state of origin, car number, and class of livestock in the consignment is taken from the waybill and placed on the bulletin board by the stockyard company. These bulletins are hung in the lobby of the train office building, where they are consulted from time to time by representatives of the respondent firms for the purposes of ascertaining what livestock may have arrived consigned to them. After livestock is unloaded at the yard, the dock foreman, a stockyard employee, places a copy of the record of each car in a designated place in the chute alley, and representatives of commission firms consult these records to determine the location of livestock consigned to their respective firms.

[fol. 52] 41. Cattle and hogs arriving by rail are delivered to the respondent firms by the stockyard company at the unloading chutes. If their representatives are not at the unloading chutes to take delivery before the chute pens are needed for unloading other livestock, the stockyard company yards the livestock in convenient pens near by. Under such circumstances the hogs are usually taken to the pens on the second floor of the hog house, and cattle are yarded in pens on the ground floor of the hog house. The representatives of the respondents then call for the livestock at these divisions. Sheep arriving by rail are delivered to the respondents' pens in the sheep barns by the stockyard company. In the case of cattle and hogs arriving by truck, the respondents are required to drive the livestock to their own pens from the truck unloading chutes or near-by pens. Sheep arriving by truck are unloaded at a convenient place in the sheep division and are driven to the sale pens by the stockyard company.

42. The stockyard company tags all animals arriving crippled or dead, in order that they may be properly identified. There is an arrangement whereby a rendering company gathers up the dead animals and removes them to its plant, remittance therefor being made to the commission firms by the rendering company. Crippled hogs are gathered up by the stockyard company and delivered to a "crip" scale, where they are weighed and are then removed by the packers who purchase them. There are two

associations which engage in the business of handling crippled cattle and sheep from the yards direct to the packing plants. Such crippled livestock is purchased on a salvage basis, and remittance is made to the commission firms to which the livestock is consigned. These associations make a special charge for this hauling service. This charge is deducted from the proceeds of the sale of the animals.

43. The stockyard company furnishes all the feed fed in the yards. It delivers the feed to the commission men's pens and feeds the livestock. Water and facilities for watering in each pen are also provided by the stockyard company. Employees of the respondent commission firms turn the water on. It frequently happens that the stockyard company will turn the water off. The stockyard company cleans the pens and maintains tractors, trailers, and other necessary facilities for removing debris. In seasons of bad weather, or on other occasions, the respondent firms may clean their own pens. Such cleaning consists in throwing the manure to one side of the pen or under the troughs. The employees of the stockyard company remove it later.

44. The stockyard company maintains weighmasters who operate the various scales and issue scale tickets containing information relative to each draft weighed. It also provides a man who assists in putting the livestock on the scales to be weighed, and a suitable force of employees to receive and yard the livestock when it is driven off the scales.

45. For its services and use of its facilities heretofore described the stockyard company makes a yardage charge on a per head basis and a separate charge for feeding. Respondents deduct these charges from the gross proceeds of sale of the livestock and pay them to the stockyard company. Separate charges are made by the stockyard company for services and use of facilities in connection with the branding, dipping, testing, immunization, or other special services. Usually these special services are [fol. 53] required in connection with the movement of livestock from the market back to the country, and the charges therefor are paid by the purchasers. If for any reason any of these services should be required by the

shipper of livestock to market, the charges would be deducted from the proceeds of the sale of his livestock.

46. After livestock has been sold and weighed, it is yarded and held in pens by the stockyard company for delivery to the purchaser, or until it can be loaded, if it is to be shipped to points outside the market. If the livestock is to be shipped, the employees of the stockyard company load it on the cars. This service is rendered by the stockyard company as agent for the carrier, and a separate charge is paid by the carrier.

47. The Kansas City Stock Yards Co. endeavors through advertising and soliciting to induce shippers to consign their livestock to market for sale, and to attract buyers for such livestock. It maintains a force of employees in the country who make contacts with producers and growers of livestock. These men have knowledge of market conditions and the various grades and classes of livestock. The stockyard company maintains an information bureau which keeps in touch with the field representatives and gives them current market information. They assist farmers and producers in sorting and grading their livestock, disseminate useful market information, and endeavor to obtain shipments for the Kansas City market. They do not attempt to influence the shipment of livestock to any particular commission firm.

48. A branch of the United States Department of Agriculture maintains an office at the stockyard, which is a service organization having for its purpose the collection and dissemination of market information. This office maintains a bulletin board in the Exchange Building on which it posts information in regard to the estimated receipts at Kansas City, and other leading livestock markets of the country, the prices and trend of prices at the various markets, and the prices of dressed meats in Philadelphia, Boston and New York. Facts as to local market conditions are obtained by employees of that office, who are regularly assigned to different divisions of the yard for the purpose of making contacts with salesmen and buyers. A system of leased wires is maintained whereby similar facts are readily obtained from other markets. In addition to posting information from time to time on the bulletin board throughout the day, this office disseminates

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it by radio at three different periods, furnishes it to the telegraph companies and to the press associations, and publishes a mimeographed report, which circulates extensively among producers and others in Kansas, Missouri and, to a certain extent, in other states. The informational service of this office is available to all who request it.

V. Disposition of Livestock Receipts

49. Livestock received at the Kansas City market falls into two general classes: (1) stockers and feeders, and (2) killers or butcher livestock. The demand for the stockers and feeders comes principally from those producers who are equipped to feed and finish livestock, either in feed lots or on pasture lands. The livestock ready for slaughter [fol. 54] is purchased by local packers and butchers and by packers located at distant points. The chief outlet for this class of livestock is the local packer demand. Contiguous to the market are located the plants of the four large packers, Swift, Cudahy, Wilson and Armour. There are also small packers and local butchers who cater principally to the local demand for dressed meats and meat products. The outside packers usually make their purchases through order buyers, who are regularly engaged in that business at the market. Local packers and butchers are customarily represented on the market by salaried employees. Feeders and finishers generally purchase livestock through commission firms, although they sometimes make their own purchases. There are also dealers at the market who buy for the purpose of reselling at a profit, either on the Kansas City or some other market, without slaughtering, and also without feeding such livestock to any great extent. Although dealers operate to some extent in connection with the handling of all classes of livestock, their principal activity at the Kansas City market is in buying and selling stocker and feeder cattle. Their function is primarily that of buying unsorted lots and small lots of cattle, which they later sort into different grades and classes to meet the requirements of the feeders and finishers. The disposition of the livestock received at the Kansas City market each year from 1920 to 1931, inclusive, was as follows:

[fol. 55]

	Local Slaughter	Stocker and Feeder Shipments	Other Shipments
Cattle & Calves			
1931	850,553	653,457	440,339
1930	1,006,989	712,054	426,012
1929	1,046,799	729,480	378,908
1928	1,029,385	779,707	375,680
1927	1,335,552	755,867	356,610
1926	1,459,290	761,119	378,231
1925	1,631,058	907,686	381,764
1924	1,552,429	997,601	442,221
1923	1,559,364	1,161,540	437,806
1922	1,406,845	1,151,256	383,208
1921	1,199,693	787,904	456,454
1920	1,263,882	778,214	431,260
Hogs			
1931	836,655	54,852	443,994
1930	1,096,134	74,915	841,036
1929	1,454,334	104,097	907,374
1928	1,706,286	104,841	570,085
1927	1,385,208	98,310	411,963
1926	1,427,208	110,087	482,513
1925	1,236,506	66,528	764,856
1924	1,871,991	134,287	930,753
1923	2,721,412	282,900	606,340
1922	2,052,229	161,753	426,313
1921	1,712,834	93,505	392,910
1920	1,838,080	200,196	401,618
Sheep			
1931	1,433,778	257,774	563,279
1930	1,518,225	252,418	248,548
1929	1,290,177	261,722	196,120
1928	1,270,207	360,675	156,789
1927	1,124,604	353,591	137,927
1926	1,202,043	358,983	205,433
1925	1,045,517	318,655	140,256
1924	1,046,447	367,648	156,377
1923	1,100,978	406,930	147,139
1922	1,000,200	385,282	172,756
1921	1,307,428	324,150	160,512
1920	1,065,832	474,409	148,603

[fol. 56] The above table does not include direct shipments to packers except in those cases in which such shipments pass through the Kansas City stockyard. The direct shipments contained in the local slaughter of hogs shown above was for the same period as follows:

1931	180,000
1930	159,000
1929	373,171
1928	323,787
1927	226,831
1926	164,500

1925	182,458
1924	296,470
1923	332,709
1922	187,360
1921	153,461
1920	31,859

50. The demand for livestock in Kansas City, and especially that for hogs, is greater than that supplied by the livestock arriving at the public market. Large numbers of hogs destined for local slaughter in Kansas City do not pass through the stockyard. In addition to the hogs received through the stockyards at packers received at their plants located at Kansas City, 1,679,138 in 1929, 1,185,258 in 1930, 1,478,960 in 1931, and 1,319,519 from January to August, inclusive, 1932.

VI. Business in Which Respondents Are Engaged

51. In the early development of the West drovers were accustomed to bring their livestock to a convenient point at the junction of the Kansas and the Missouri rivers and there sell it. With the development of trading in livestock at this central point there grew up a more firmly established and permanent market place. Some of those who resorted there sold not only the livestock which belonged to them but undertook the selling of that belonging to others. Later resident selling agencies were developed which devoted their attention exclusively to the handling of livestock for others at the central market. While it is the privilege of the owner or shipper of livestock to the Kansas City public market to sell his own livestock, the complicated machinery of the market place, which the selling agencies and the stockyard company have worked out for their own convenience, make it a practical necessity for the producer to consign his livestock to some regular selling agency for sale. A like situation prevails with respect to many who seek to buy livestock on the market. They may neither be able to come to the market in person nor find it to their advantage to maintain employed buyers. A demand has developed, therefore, for the services of those who stand ready to act as representatives of the buyers on the market. There have come into

existence two somewhat distinct classes of operators. The first consists of what is commonly known as commission firms. They hold themselves out to the public both to sell and to buy livestock on a commission basis. Generally speaking, the buying operations of commission firms constitute a small part of their total business. The second [fol. 57] class is made of that group of respondents commonly known as order buyers. They specialize in buying livestock on order and do no selling on a commission basis.

52. The nature of the business in which the respondents are engaged is such that it may be carried on under different types of organization. Among the respondent firms there are individual proprietorships, partnerships and corporations. One of the respondent firms is operated as the branch house of a firm maintaining its principal headquarters at another market. Two of the respondents are organizations of producers engaged in operating on a cooperative plan. These return their profits, or a portion of them, if any, to the members on a patronage basis. Four of the respondent firms are registered to handle sheep only. All others engaged in selling and buying livestock hold themselves out to the public to handle cattle, calves, hogs and sheep. Some order buyers specialize in the handling of one species of livestock and others handle all species.

VII. Service Rendered by the Respondents

53. The livestock commission business carried on by the respondents is conducted on the premises of the stockyard company. The physical handling and caring for the animals and their selling and weighing, take place in pens belonging to the stockyard company and assigned by it to the various respondents. The office work growing out of the sale of the animals and the accounting to the owner for the proceeds of sale is carried on in the Exchange Building also owned by the stockyard company. The respondents do not pay for the use of the pens but pay rent for the office space which they occupy in the Exchange Building. The rendition of the services of selling and buying livestock makes it necessary for the respondents to employ assistants in the yard and in the office. There is a wide variation among the firms as to the character of

their organization and in the extent to which work can be specialized. A relatively small volume of business does not permit of that degree of specialization which is possible in the case of a firm which receives a large volume of business. Most of the larger firms have a separate department for each species of livestock handled and usually place a head salesman in charge of each department. In some instances divisions exist within a department as, for instance, in the case of those firms which handle a large volume of business. Such firms may have a fat steer division, a stocker and feeder division, a butcher cattle division, and a calf division. On the buying side of the market each buyer is generally looking for a specialized grade or class of livestock. Those packers who are represented by salaried buyers have special buyers for the different grades and classes of cattle. Specilization has not been carried to the extent in the case of hogs and sheep that it has in the case of cattle. Order buyers are usually in the market for distinct grades and classes of livestock. Dealers generally do not specialize to any great extent. Their market function is to buy mixed grades and classes of livestock and then to sort them in accordance with the needs of the trade. In some cases the owner, or owners, of a small firm do much of the yarding and office work in addition to the selling of the livestock.

[fol. 58] 54. The situation with respect to specialization among salesmen applies in general to the yarding and office work. The large firms divide their help into divisions in the cattle alleys and place each division in charge of a head yardman. In the larger firms the various office employees are frequently assigned to special tasks or departments under the supervision of an office manager. As a general rule the yard work is heaviest in the early part of the day and the office work heaviest in the latter part of it. Because of this, some of the office employees may assist in the yard work in the forenoon and some of the regular yard employees may help in the office in the afternoon. The organizations are flexible and permit a high degree of cooperation among the employees of a firm.

55. Some of the respondent firms do not have sufficient livestock of certain species to warrant the maintenance of a selling organization. Many firms, for instance, do not

have sheep salesmen. These firms engage the salesman of some other firm. This arrangement concentrates the selling and yarding of sheep in the hands of a comparatively few firms, and thus makes possible a high degree of efficiency. A firm which does not elect to sell the sheep consigned to it assesses the regular commission charge against the consignor and with a part of this revenue pays someone else for selling the sheep. Each firm handles all the office and accounting work growing out of the sale of sheep consigned to it. An arrangement similar to that described for the handling of sheep is sometimes entered into with respect to hogs and cattle, but in the case of the latter species the arrangement is less frequent than in the case of sheep. A few firms do not maintain their own office force but engage other respondent firms to do their office work for them.

56. Most of the livestock received for sale at the Kansas City market arrives during the early morning hours. It is important that the livestock be handled expeditiously in order that it may be watered, fed and sorted in time for the market. The bulletins prepared by the stockyard company with respect to the arrivals of livestock are hung in the train office building, and there respondents' employees go to obtain information as to arrivals. Frequently they obtain additional information in regard to consignments from letters, telephone calls, and personal contact with shippers. As soon as the information is obtained, the representative of the commission firm goes to the designated place near the track where the livestock is unloaded and obtains a chute slip showing the car number and the number of chute in which the stockyard company has placed the livestock.

57. Rail arrivals of sheep are driven from the unloading chutes to the pens of respondent market agencies, and formal delivery is made there. Cattle and hogs arriving by rail are delivered to the respondents at unloading chutes or near-by pens. After the representative of the commission firm has ascertained the pen in which the livestock has been placed, he goes to the representative of the stockyard company who is in charge of the particular division, and requests delivery. This representative of the commission firm is usually called a "train run-

ner." The livestock is counted out of the pen into the alley, and a train runner then goes ahead of it, leading the way to the pens assigned to his firm. In the case of [fol. 59] cattle and calves delivered at the unloading chutes, the stockyard company furnishes a man to go behind each load of livestock. During periods of heavy runs a train runner may lead a procession containing a number of carloads, each kept separate from the other by a stockyard employee. Such assistance is not furnished by the stockyard company in the case of driving hogs, nor in those instances where cattle are yarded temporarily in holding pens. When livestock reaches the pens of a commission firm, it is counted into the pens, usually by the head yardman for that firm. In the case of night arrivals during the season of heavy runs of cattle, some firms maintain a night train runner, either as an individual employee or one employed jointly with other firms.

58. Pens are assigned to the various commission firms in the different divisions of the yard. These assignments are made by a committee. The number of pens assigned to each firm is governed by the volume of business handled, and the location is governed largely by the length of time during which a firm has been in business.

59. Sheep arriving by truck are delivered at the sheep division. With respect to truck arrivals of hogs and cattle, it is necessary for the respondents to drive the livestock from the truck unloading chutes or near-by holding pens to their respective pens in the regular divisions. This work is accomplished either through individual employees or through those who make it their business to drive livestock at a stipulated head charge. The stockyard company makes available information in regard to truck arrivals of livestock through notification slips placed in boxes at the respective drive-in unloading chutes.

60. In taking cutsody of livestock consigned to them for sale respondents' employees make such records and memoranda as will enable them to preserve the identity of each consignment. Through experience gained in handling livestock, these employees can often identify animals once they have seen them. Frequently a consignment of livestock is owned by two or more people. Such livestock is usually marked in some distinctive way in order to main-

tain the identity of each owner's livestock. There are also frequent shipments of branded livestock, and these brands serve as a basis for identifying ownership.

61. Occasionally some of the livestock contained in a consignment is intended for a market agency other than the one to which it is billed. Such livestock is placed in a separate pen. The receiving agency then notifies the firm to which the livestock is to be delivered, and that firm removes the animals to its pens.

62. Traders who buy and sell in the yard for profit sometimes place their livestock with the respondent firms to be sold. This is called "planting" and such livestock is referred to as "seconds." In such cases the traders usually drive their livestock to the commission firms' pens.

63. Upon receipt of livestock in its pens an employee of the commission firm, usually the head yardman, orders feed from the stockyard company, which maintains the equipment for the delivery of the feed and employees who do the feeding. The employee of the commission firm [fol. 60] keeps the record of the amount of feed ordered. Sometimes the head yardman will sort and grade the livestock before feeding. As soon as it has been fed and graded, it is watered. Frequently when pens are available, a consignment of livestock will be divided into several bunches in order to enable the animals to drink with less confusion. Some of the work of preparing livestock for sale is done by the yardmen. When the salesmen arrive in the yard they may do further sorting and grading.

64. The regular market hours are from 8 a. m. to 3 p. m., but the stocker and feeder class of livestock may be bought or sold at any time. Salesmen usually go to their offices some time before the market opens and review available information, in order that they may judge the trend of the market. In many instances salesmen have seen the cattle in the country before they were shipped. Frequently the owners telephone or write to the salesmen about the shipment. Sometimes shippers will accompany their shipments and give the salesmen helpful information in regard to the livestock to be sold. Salesmen also check up on the condition of the previous day's market. They obtain similar information in regard to the other livestock

markets. They ascertain the estimated receipts of livestock at the Kansas City market and other markets for that day and opening prices for the day at other markets, in so far as such information is available.

65. The salesman then goes to the yard to look over the consignments and does whatever sorting is, in his opinion, necessary. When the market opens the buyers go to the pens where they, in company with the salesman, look at the livestock. According to the custom of the market only one buyer is taken into a pen at one time. If the livestock is suitable for the buyer, an offer and a bid are made. If a sale is not consummated, the buyer goes on to some other salesman, and the livestock is shown to the next buyer. On some days the buyers are very active and go out into the yard as soon as the market opens. On other days the buyers go out late in the forenoon and are slow to buy. There are many factors, the more important of which are the activity of the consuming demand and the supply of livestock, which determine whether a market is active or dull. It is bargaining among salesmen and buyers which finally determines what the market prices for the various grades and classes will be each day. The market may be strong at one time of the day and weak at another time. It is necessary that salesmen study the forces which affect the market from hour to hour, in order to determine in their own mind the best time at which to sell their livestock. Sometimes, although not frequently, a shipper will instruct a salesman not to sell livestock under a stipulated price. However, generally speaking, the shipper leaves this matter to the judgment of his salesman. In addition to the study of information in regard to supply and demand as factors affecting prices, a salesman must also be a judge of the factors which affect the value of livestock. In view of the fact that there is a wide margin between the prices paid for the highest quality of cattle and the lower grades of cattle, it becomes a very responsible task for a salesman to judge accurately the grades of cattle which he has to sell.

66. Once the market is made, sales are consummated rapidly, and the movement of livestock to the scales for weighing begins. The yardmen usually drive the livestock to the scales, although the salesmen in some instances as-

[fol. 61] sist in this work. As soon as sales are consummated the salesman gives his yardman information in regard to the names of the owner and the buyer, and how the livestock is to be weighed, if special sorting at the scales is required by the buyer. The yardman gives the weighmaster the information as to the owner and purchaser of the livestock when the livestock is driven on the scales. The weighmaster records this information on the scale ticket. When the livestock is driven off the scale, it becomes the property of the purchaser, and the employees of the stockyard company take possession of it and yard it for the buyer. Copies of scale tickets are taken by the yardman to the salesman, either in the yard or in the office, and the salesman marks the price thereon.

67. Respondents also assume certain responsibility in connection with the determination of the credit of the buyers of livestock. They know those who are members of the clearing house and do not hesitate to sell livestock to such members. If the prospective buyer is not a member of the clearing house, it is necessary to investigate his credit. A large percentage of the purchases are made by those whose credit is already known to respondents' salesmen.

68. The price of crippled and dead animals is determined upon a salvage basis. Standing arrangements are had with the Standard Rendering Company in connection with the price paid for dead animals, and similar arrangements with packers govern the determination of the prices paid for crippled animals. In this manner the crippled and dead livestock can be handled promptly and with the greatest convenience to all concerned.

69. In the cattle division there are many small lots of livestock to be weighed. There are frequent drafts consisting of only one or two head. This condition prevails especially in connection with the many grades and classes of butcher livestock. The larger commission firms maintain what is known as a "jack pot" man. He is one who possesses the peculiar ability to identify many different animals as to ownership and buyers. As a salesman consummates the sales of these individual head or small lots, he advises the "jack pot" man, who turns the animals into the alley. When he has accumulated a convenient

number of head, he drives them to the scale where he sorts them according to ownership and purchaser. Special scales are maintained for weighing "jack pots." This procedure makes it possible to economize in time and equipment in handling this character of business.

70. Those who are engaged in the business of buying livestock undertake to inform themselves in the same way as the salesmen do. Those who buy livestock on order will make a survey of the livestock in the yard to determine the supply of those classes and grades which are suitable to their orders. After they find a good supply of the kind of livestock which they know some of their customers use in their trade, they may telegraph or telephone to their customers, give an estimate of the price, and the prospect of obtaining supplies that will meet their particular requirements. Sometimes these customers place standing orders with their buying representative at the market. Frequently customers come to the market and accompany the buyers as they go about the yard looking for the kind and class of livestock desired. Some- [fol. 62] times order buyers will buy livestock when the price appears favorable and then obtain the orders later. One of the chief qualifications of a buyer is to be able to judge the killing qualities of slaughter livestock and the feeding and finishing qualities of stockers and feeders. In case the customer is a countryman or some one not known to the buyer, it is necessary to investigate his credit. Usually those who are not regularly engaged in business at the market do not pay cash or the equivalent of cash for their livestock. The order buyer must pay for the livestock promptly, and in many cases it will be several days before payment by the customer is realized.

71. If livestock is purchased to be shipped out, the buyer orders the necessary cars from the railroad company as soon as the purchase is made. Then he ascertains the number of head and the pen in which the livestock is held, and gives this information to the railroad. In case of stocker and feeder livestock which is bought to go back to the country, there are certain incidental services which may be necessary, such as branding, dipping, dehorning, and vaccination. Although these services are performed by the stockyard company, the yardman for the buyer

supervises such operation. When the livestock is ready for shipment, the loading out is done by the stockyard company's employees. It is customary for a yardman or someone representing the buyer to supervise this work.

72. The office work in connection with the buying and selling of livestock consists primarily in rendering accounts to shippers and purchasers and making remittances and collections, as the case may be. Forms known as account sales are used in rendering accounts in the case of livestock sold. One of these forms is prepared covering each consignment, showing the name of purchaser or purchasers, the number of drafts, the number of head, weight, and price of each draft, gross proceeds, items of expense such as freight, feed, yardage, commissions, and other deductible items, and the net proceeds. A copy of this is sent to the owner. In case of plural ownership consignments the accounting may be handled as in the case of single ownership consignments, in which event the prorating is done at the shipping point. However, it happens frequently that a commission firm is requested to do the prorating, which consists in figuring the gross proceeds of sale of each owner's livestock, the various expenses prorated to each owner, and the net proceeds of sale of each. Sometimes a request is made for individual account sales for each owner in a plural ownership consignment. In connection with the purchase of livestock an account purchase is prepared somewhat in the same manner as an account sale, giving the details as to the transaction, including the cost and any local expenses, such as commissions. Bills for the purchase of livestock which are presented are checked before the account purchase is made out.

73. The respondent market agencies which are engaged in selling livestock have followed the practice for a number of years of remitting the proceeds of sale of livestock through the bank. Usually the shipper will designate the bank to which he desires that the proceeds of sale be sent. Respondents have available to them information with respect to the various Kansas City banks which are correspondents of the local banks throughout the Kansas City trade territory. As soon as the net proceeds of sale have been computed, a commission firm will place an order with

[fol. 63] its bank to deposit the proceeds to the credit of the shipper at his bank. If requested, this transaction is handled by telegraph rather than by mail. A special effort is made by all market agencies to remit as promptly as possible, and the remittances are made as soon as the net proceeds of sale of each consignment can be ascertained, even though the collections from the buyers have not been made. Usually remittances of proceeds from the sale of truck-in livestock are made by firm check. In some cases such proceeds may be remitted through the bank or by cashier's check. Most of the collections are made through the clearing house. The packers, order buyers, and brokers who clear traders are members of the clearing house, and under the rules of that organization there are certain time limits within which they must remit through the clearing house for the livestock which they have purchased. Order buyers usually draw drafts upon their customers as soon as the livestock has been shipped, or they may take their customer's check. It seldom happens that a customer in placing an order will advance the cash.

74. Salesmen and members of respondent firms spend considerable time in the office interviewing shippers. This is done usually after the selling is completed. If shippers are not at the market, a salesman will write a letter to each one for whom he has sold livestock that day, giving information in regard to the transaction and such other general market information as he may deem helpful to his customer. However, this is not always done with respect to livestock received by truck.

75. There exists an arrangement between each of the respondents and the stockyard company whereby the latter, acting as agent of the carrier, will make formal delivery of livestock before freight charges on the consignment are paid. The stockyard company requires each respondent market agency to which livestock is shipped to furnish a bond covering the payment of freight, yardage, feed, and any other charges. These charges are deducted from the gross proceeds of sale of livestock before remittances are made to the shippers. The bills for these items are presented to respondents through the clearing house.

76. Each respondent furnishes a bond conditioned upon the faithful and prompt remittance of the proceeds of sale of livestock and the prompt execution of orders and the payment for livestock bought on order. Such a bond is required by the rules of the Kansas City Live Stock Exchange of its members, and such a bond is required of all market agencies under the provisions of the Packers and Stockyards Act and the regulations promulgated thereunder.

VIII. Personal Service Character of Respondents' Business

77. The livestock commission business is essentially of a personal service character. The amount of capital necessary to conduct it is relatively small. The use of certain material equipment, however, such as office furniture and fixtures, and equipment of more or less elaborate character, automobiles and horses, is essential in the rendition of the service. The automobiles are used for trips to the country both to solicit shipments and to appraise livestock. They also are used for travel to near-by feedyards whereat livestock may be under the control of [fol. 64] respective respondent firms while it is being fed and also whereat respondents sometimes consummate sales of livestock. In some instances the automobiles are owned by the respondent firm which uses them. In others they belong to a member or employee of the firm and their use is compensated for on some prearranged basis, such as actual expense or mileage. The horses are used in the cattle yards and are ridden by the cattle salesmen in the course of their handling and selling of cattle. In some instances they also are ridden by patrons who either have cattle consigned to respondents for sale or else are seeking to purchase cattle from respondents. In some instances these horses are owned by the respective respondent firms who use them. In others they are the property of the individual salesmen who may be owners or employees of a respondent firm. In still other instances they belong to the stockyard company and are rented, as occasion requires, at an agreed rental usually on a time basis.

78. In addition to the more or less permanently invested capital enumerated above, a certain amount of cash work-

ing capital is required. The business is essentially a cash one. That is to say, it comprises the receipt and remittance of the proceeds of sale of property owned by its patrons. Nevertheless, only those sales of livestock which are billed to the purchaser prior to 2 o'clock p. m. on the day of sale are paid for on that day. Respondents follow the practice of remitting the proceeds on the day of sale. Such remittances are made by deposits in banks at Kansas City for transmission to the banks of respondents' patrons. This form of remittance is desirable because it eliminates the so-called "float." It requires, however, that each respondent firm have on hand or available through bank credits, a sufficient amount of working capital daily to cover the difference between the total proceeds of sales made each day and the total collections realized on that day. A greater need for cash working capital arises from respondents' activities in the purchases of livestock for their customers. The custom of the market place is such that this livestock must be paid for not later than 10 o'clock a. m. of the day following its purchase. The patron, who usually is a feeder, rarely comes to the market in position to make cash payment. This is partly at least because he does not know in advance exactly what the monetary requirements are to be and because in many instances he cannot arrange credit with his local bank until after the arrival of the livestock at his railroad station or farm. It appears impracticable to avoid extension of credit to these patrons. The livestock so purchased is paid for by the respondent firm and a draft is drawn on the patron through regular banking channels. Such drafts ordinarily are paid within from two days to two weeks, but infrequently may require more time.

79. The revenue of respondents' business consists of commissions charged by them for the sale and purchase of livestock. By far the greater portion of it comes from sales. The revenue from sales is deducted from the gross proceeds of such sales and therefore is received daily. This practically does away with any necessity for accounts receivable except in those infrequent instances in which a respondent firm advances money to a patron in contemplation of the sale of livestock, either already received at or on its way to the market. In the buying of livestock the receipt of commissions customarily is delayed from two days

to two weeks. Some of respondents' cash requiring ex- [fol. 65] penses are paid in advance, necessitating a small amount of working capital for that purpose. There is a further need for working capital to tide over those seasons when the low run of livestock may not produce enough income to maintain the overhead expenses of the business. It is not altogether practicable for a commission firm to expand and contract its organization to meet the fluctuation in receipts of livestock. Additional yard help may be hired during the heavy seasons but there are certain employees, such as salesmen, who must by the nature of the business be retained throughout the year.

80. The stockyard company requires of those engaging in business on the market a bond covering, among other things, the payment of the freight, feed and yardage charges. In addition to the formal requirements of registration and the filing of a tariff, the Packers and Stockyards Act, 1921, as amended, requires each market agency to give a bond covering the faithful and prompt remittance of proceeds of sale of livestock, and the prompt and faithful execution of orders for the purchase thereof and the payment for such purchases. The maintenance of these bonds necessitates a small amount of capital.

81. By far the greater part of the service rendered by respondents to their patrons comes not from the employment of property or money but the application by respondents and their more responsible employees of personal skill, judgment and integrity. Such skill and, to a considerable extent, judgment result from the training and experience acquired by respondents and their more responsible employees in the course of that development whereby one who enters the business in youth as a yardboy or minor office employee grows into a salesman, proprietor, or supervising office employee. While general scholastic training is not unusual among respondents, the character of the business is such that one may become better fitted for the higher positions by entering the low positions requiring little, if any, previous experience, and learning the business while working up to the better places. The personnel of the business may be divided into those whose major work is performed among the livestock in the pens and alleys and those whose time principally is spent in the offices. The first of

these usually enter the business as young men with a background of livestock experience on farms. Nearly always they begin as yardmen for the commission men, however, in some instances as yardmen or other employees of the stockyard company. As yardmen they work side by side with and as assistants of the salesmen. Through this association they acquire the skill requisite to beginning as salesmen. While still yardmen they are permitted, from time to time, to sell livestock under the supervision of the salesmen, and later to sell small consignments of less important grades and classes on their own responsibility. This leads them to the position of salesmen when a vacancy occurs in the sales force. The salesmen come in personal contact with the patrons and acquire a personal following which may become sufficiently large to enable them to acquire a membership in the firm by which they are employed, or to establish a new firm of their own.

82. The method of advancement to the higher office positions is not dissimilar from that which has been described with respect to the employees who work in the yard. In [fol. 66] neither instance, however, have the more responsible employees and proprietors always worked up in the particular firm with which they are presently associated. In some instances, of course, the requisite experience has been gained while associated with other commission firms at Kansas City or at other livestock markets or while employed by a stockyard company or engaged in some activity related to the marketing of livestock at public stockyards. However, the rule is that the personnel holding the more responsible positions have gained their knowledge as an incident of employment in lesser positions at salaries compensatory of the services performed in those positions.

IX. Rates Charged by Respondents for Services Rendered

83. Respondents who were members of the Kansas City Live Stock Exchange filed to become effective on January 1, 1926, their tariff No. 2, setting forth all rates and charges for selling and purchasing livestock on the Kansas City market. Each of such respondents filed its separate supplement No. 3 to Tariff No. 2, effective January 1, 1930. This supplement contained rates and charges assessed by each respondent filing said supplement to cover the charges made for insurance on livestock in the yards. With this

supplement there was filed Tariff No. 2 as modified by Supplement No. 2 thereto. Certain of the respondents, pursuant to provisions of Tariff No. 2, as amended by Supplement No. 2, filed their individual tariffs covering their rates and charges for purchasing livestock. On May 11, 1932, and prior to the issuance of the Acting Secretary's order of May 18, 1932, all respondent commission firms (i.e., those who sell livestock on a commission basis), and all the respondent order buyers except three filed severally a uniform tariff of rates and charges for selling and buying livestock to become effective on May 23, 1932. The two respondent cooperative commission firms filed schedules, effective on June 18, 1932, in conformity with the order of May 18, 1932. These two cooperative agencies later filed schedules, effective on October 10, 1932, modofying somewhat their commission charges.

84. A summary of the tariffs of respondents, other than the cooperative market agencies, now in effect at the Kansas City market follows:

Selling Charges

Cattle and Calves Arriving by Rail:

Calves
- 1 to 20 head, average weight 400 lbs. or under ..... 30¢ per head
- All over 20 head, average weight 400 lbs. or under ..... 25¢ per head

Yearlings and Cattle
- 1 to 20 head, average weight 400 to 800 lbs. ..... 60¢ per head
- All over 20 head, average weight 400 to 800 lbs. ..... 40¢ per head

Cattle
- 1 to 20 head, average weight 800 lbs. and over ..... 70¢ per head
- All over 20 head, average weight 800 lbs. and over ..... 60¢ per head

[fol. 67] Cattle and Calves Arriving by Truck:

Calves
- 2 to 20 head, averaging 400 lbs. or under 30¢ per head
- All over 20 head, averaging 400 lbs. or under ..... 25¢ per head

Yearlings and Cattle
2 to 20 head, averaging 400 to 800 lbs.... 65¢ per head
All over 20 head, averaging 400 to 800 lbs. 45¢ per head
Cattle
2 to 20 head, averaging over 800 lbs..... 70¢ per head
All over 20 head, averaging over 800 lbs. 60¢ per head

Minimum Charge for One Head:

Calves—40¢.
Cattle—80¢.
Hogs
1 to 40 head, averaging over 130 lbs..... 25¢ per head
All over 40 head, averaging over 130 lbs.. 10¢ per head
1 to 50 head, averaging less than 130 lbs.. 20¢ per head
All over 50 head, averaging less than 130 lbs. ..... 5¢ per head

Minimum Charge for One Head: 35¢

Sheep or Goats Arriving by Rail
For the first 120 head in each car..... 10¢ per head
Additional head over 120 to 160 head.. 5¢ per head
Each additional head over 160 head..... 4¢ per head
Sheep and Goats Arriving by Truck
For each 300 head or part thereof,
1 to 10 head, 25¢ per head
11 to 40 head, 20¢ per head
41 to 60 head, 15¢ per head
61 to 300 head, 4¢ per head
Minimum Charge for One Head—35¢

Buying Charges

Cattle and Calves Shipped out by Rail
Cattle and Calves, 50¢ per head; minimum $12 a car; maximum $15.
Calves, 30¢ per head, with a maximum of $15 per car.
Cattle Trucked Out
50¢ per head; maximum $15 for 22,000 lbs.
[fol. 68] Cattle Shipped out for Slaughter, $15 a car.
Cattle trucked out for Slaughter, 50¢ a head, maximum $15 for 22,000 lbs.

Buying Charges—Continued

Hogs

Feeders and Stock Pigs

Up to 50 head, 20¢ per head

51 head and above, 5¢ per head

Slaughter Hogs

Up to 50 head, 20¢ per head

51 head and above, 5¢ per head

Sheep or Goats Shipped out by Rail

$12 single deck; $16 double deck.

Sheep or Goats Driven or Hauled out

Up to 125 head, 20¢ per head; maximum $12

Above 125 head, 15¢ per head additional; maximum $16 up to 250 head.

A summary of the tariffs of the respondent cooperative market agencies now in effect at the Kansas City market follows:

Selling Commissions

		Minimum		Maximum	
Straight Cars	Head	S. D.	D. D.	S. D.	D. D.
Cattle	$.60	$13.00		$15.50	
Calves	.30	13.00		15.50	$18.50
Hogs	.20 up to 40 head				
	.10 each additional head over 40			12.00	16.00
Sheep	.15	10.00		12.00	17.00

Mixed Cars:

Cattle—65¢ per head. Not to exceed $15.50 for the cattle in a car.

Calves—32¢ per head. Not to exceed $15.50 for the calves in a single deck or $18.50 for the calves in a double deck car.

Hogs—25¢ per head up to 40 head. 10¢ per each additional head over 40, not to exceed $12 for the hogs in a single deck car, or $16 for the hogs in a double deck car.

Sheep—15¢ per head. Not to exceed $12 for the sheep in a single deck or $17 for the sheep in a double deck.

[fol. 69] Drive-Ins:

Cattle—65¢ per head with a maximum of $16.50 up to and including each 27 head.

Calves—On each 75 head of calves or fraction thereof

in one consignment belonging to one owner the rates shall be determined as follows: 30¢ per head with a maximum charge of $16.50 up to and including 55 head; 25¢ per additional head above 55 with a maximum charge of $17.50 up to and including 75 head.

Hogs—25¢ per head up to 40 head, inclusive; 10¢ per each additional head with a maximum charge of $14 on any one consignment.

Sheep—On each 250 head of sheep or fraction thereof in one consignment belonging to one owner the rate shall be determined as follows: 20¢ per head with a maximum of $13.00 up to and including 125 head. 15¢ per additional head above 125 with a maximum charge of $18.00 up to and including each 250 head.

Buying Commissions

Cattle or Calves:

Non-Slaughter

(a) Shipped out—50¢ per head with a minimum of $12 and a maximum of $15 per car.

(b) Trucked or driven out—60¢ per head with a maximum of $16 and 22,000 pounds shall be considered as the maximum weight to be purchased at this maximum rate.

Slaughter

(c) Shipped out—maximum $15 per car.

(d) Trucked or driven out—60¢ per head.

Hogs:

(e) Slaughter—$7.50 for single deck car; $12 for double deck car.

(f) Stock—$12 for single deck car; $20 for double deck car.

Driven or Hauled out

25¢ per head up to 48 head

On larger lots carload rates; 120 head to be considered a single deck load.

[fol. 70] Sheep or Lambs:

(g) Sheep or lambs $12 per single deck and $16 per double deck car.

(h) Sheep or lambs driven or hauled out, 20¢ per head or a maximum of $12 up to and including 125 head. 15¢

per additional head above 125 with a maximum charge of $16 up to and including 250 head.

The foregoing are the basic rates but do not include all charges made. There are, in addition, provisions in respondents' tariffs for certain extra service charges, minimum charges on consignments, and special charges for selling the livestock of dealers. Besides these there are other miscellaneous provisions with respect to the application of the rates.

X. Volume of Business Handled by the Respondents

85. The revenue producing business of the respondents consists of livestock sold and livestock purchased on a commission basis in the Kansas City stockyard and to a comparatively slight degree at points away from Kansas City. The volume discussed under this heading relates to that portion of the business of the respondents transacted at the Kansas City market. Most of the respondents who sell livestock also purchase it on order and charge a commission therefor. Such purchasing is the principal business of certain respondents known as order buyers.

86. While in this order the unit principally used for rate making purposes is the head of each respective species of livestock, simplicity and clarity in the statement of relative revenue producing volumes of the respective respondents require the use of some common denominator. This is for the reason that the commissions for the sale or purchase of a single head of cattle necessarily exceed to a considerable degree such commissions with respect to a hog or a sheep. The fact that a carload of hogs or sheep contains many more animals than a carload of cattle brings the commission revenue produced from it much more nearly on a level with that produced from a carload of cattle. Therefore, in this discussion of the revenue producing volume, the livestock of each species handled by each respective respondent commission firm is reduced to carload equivalents based upon the average number of animals per car of the particular species contained in the total number of straight cars of that species received by the particular respondent during the years 1929 and 1931. The following table sets forth the number of cars of livestock of all species received by each of the respondents:

[fol. 71] Volume Handled by Commission Men in 1929

Firm No.	No. of Cars	Firm No.	No. of Cars
33	114	62	1306
41	131	48	1367
37	162	7	1382
72	165	70	1400
66	178	55	1441
80	277	52	1463
86	365	53	1583
85	424	65	1625
78	449	26	1736
79	449	56	1775
11	456	68	1838
43	492	34	1894
74	499	28	1930
31	512	14	2124
67	555	25	2147
1	596	42	2288
61	611	18	2381
76	612	12	2958
6	642	83	2980
17	656	71	3117
20	805	13	3343
15	829	84	3541
8	854	51	3786
23	871	73	4051
5	879	35	4394
30	950	10	4913
60	1000	36	4995
77	1022	82	5415
44	1039	46	7553
16	1204	54	8158
75	1208	63	8577
29	1285	59	8778
4	1302		

Of these 65 firms listed above, 11 firms handled over 50 per cent and 25 firms handled over 75 per cent of business received by all.

Volume Handled by Order Buyers in 1929

Firm No.	No. of Cars	Firm No.	No. of Cars
49	11	3	480
47	34	38	947
24	75	21	1124
58	79	32	1369
40	102	81	1978
69	203	64	2771
39	446	57	3309

[fol. 72] Volume Handled by Commission Men in 1931

Firm No.	No. of Cars	Firm No.	No. of Cars
37	67	23	1239
33	72	4	1244
72	88	44	1261
67	91	56	1263
88	99	62	1269
11	106	53	1297
66	112	65	1372
1	257	70	1382
74	314	48	1421
9	364	14	1641
79	381	34	1984
78	421	25	1999
76	424	42	2022
61	425	18	2092
87	432	55	2219
17	446	71	2234
19	447	35	2418
6	605	12	2450
15	702	13	2475
43	785	73	2936
30	814	51	2976
52	820	84	3021
5	857	82	3741
75	872	83	4130
60	905	36	4996
77	906	46	5641
29	962	10	5699
16	988	63	6009
20	1039	59	7022
7	1067	54	8544
26	1164		

Of the 61 firms listed above, 11 firms handled over 50 per cent and 23 firms handled over 75 per cent of the business received by all.

Volume Handled by Order Buyers in 1931

Firm No.	No. of Cars
101	3417
102	2103
103	892
104	289
105	99
106	618
107	570

[fol. 73] XI. Gross Revenues

87. The respondent commission firms vary among themselves in the amount of gross revenues received from the sale of livestock consigned to them. These differences are due, for the most part, to variation in the volume of livestock received by them. Some of them, however, are attributable to a lack of uniformity in the character of business received. The livestock consigned to some firms may run heavily to one species and grade and that of another to another species and grade.

88. The following tables show for each firm the gross selling and buying commissions received from Tariff No. 2 in 1929 and in 1931:

Commission Men

1929		1931	
Firm No.	Amount	Firm No.	Amount
33	$1,943.52	37	$1,199.90
41	2,228.05	33	1,522.95
72	3,021.40	72	1,695.05
37	3,115.05	88	1,832.75
66	3,326.40	11	1,845.15
80	4,658.92	66	1,983.00
86	6,386.20	67	2,167.55
85	7,023.30	1	3,600.28
11	7,224.28	9	5,687.96
79	8,294.75	74	5,923.11

Commission Men—Continued

1929		1931	
Firm No.	Amount	Firm No.	Amount
78	8,368.25	79	7,446.58
74	8,523.07	78	7,563.75
67	9,547.92	61	7,718.13
31	9,697.15	76	8,097.73
61	10,187.30	19	8,135.30
1	10,317.35	17	8,421.15
76	10,908.58	87	8,883.96
43	11,246.92	6	11,688.49
6	11,564.97	52	14,781.04
17	12,195.40	15	14,911.27
23	14,993.86	30	15,428.75
20	15,271.95	77	15,927.86
8	15,603.20	75	16,274.93
15	17,02[illegible]	60	17,078.82
5	17,3[illegible]	43	17,419.88
77	17,65[illegible].03	5	17,556.01
30	17,971.15	29	18,286.82
60	19,297.77	16	18,837.50
75	20,710.71	20	19,581.50
16	22,421.33	7	20,078.27
62	23,139.60	23	20,792.66
4	23,171.64	26	21,807.77
29	23,804.71	4	22,336.53
44	25,014.27	56	23,193.08
48	25,910.35	62	23,488.44

[fol. 74]

52	26,038.80	53	23,881.88
7	26,481.24	65	25,643.59
55	26,770.90	70	26,391.90
70	27,154.97	48	27,216.03
53	28,775.67	44	27,679.43
56	30,627.34	34	29,041.10
65	31,275.50	14	32,208.87
26	31,517.40	25	36,280.93
68	31,603.26	18	37,283.65
34	31,992.53	42	39,296.66
28	34,325.90	55	40,949.18
14	37,534.95	71	41,474.09
25	38,382.32	35	45,007.41

Commission Men—Continued

1929		1931	
Firm No.	Amount	Firm No.	Amount
18	42,551.14	12	45,066.81
42	43,228.85	13	47,563.60
83	50,133.21	73	51,233.80
12	52,653.11	84	52,999.55
71	53,301.19	51	54,703.22
13	61,483.65	82	67,812.70
84	61,984.59	83	68,677.60
51	65,065.77	46	91,216.54
73	72,448.32	36	99,769.35
35	78,374.95	10	102,078.98
10	90,759.27	63	104,993.75
82	94,938.17	59	126,036.08
36	118,172.84	54	154,137.19
46	124,217.91		
63	148,516.86		
54	148,669.21		
59	155,381.93		
	$2,313,442.99		$1,911,837.81

Of the 65 firms listed for 1929, 11 firms received over 50 per cent of the 1929 revenues; 26 firms received over 75 per cent of these revenues. Of the 61 firms listed for the year 1931, 11 firms received over 50 per cent of the revenues for that year; 24 firms received over 75 per cent of the revenues of that year.

XII. Methods Used by Respondents in Getting and Maintaining Business

89. The respondents employ many different methods in their attempts to get and maintain volume of business. They vary somewhat in their opinions as to the relative value of the different business getting and maintaining activities. They are practically unanimous, however, in the view that the most important factor is the rendering of the highest class of service. It is their opinion that a satisfied customer is a firm's best advertisement. Most of the respondent firms send out market letters periodically. These vary in frequency, size and content. They usually contain

information about general market conditions and prospects for the future, and give an account of some outstanding sale made by the issuing firm. Frequently matters of general interest to livestock producers are incorporated in these market letters. In addition to these, some of the [fol. 75] firms get out circulars or cards giving suggestions about sorting and grading and methods of feeding and loading livestock. Those respondents who are members of the Live Stock Exchange are prohibited by its rules from giving presents or gifts in consideration of past or future business. This rule does not preclude the giving of articles, such as lead pencils, memorandum books, and other inexpensive advertising novelties.

90. Some of the respondents advertise in livestock journals and in the local papers in the territory from which they are accustomed to receive livestock. A local livestock market paper is published at the Kansas City market. Prior to January 1, 1930, it was the custom of many of the respondents to give free subscriptions to this paper to some of their customers. On January 1, 1930, the respondents who were members of the Exchange discontinued this custom under a rule of the Exchange which became effective on a sliding scale basis within a period of six months. In lieu of this practice, the Exchange began a radio broadcast service for the maintenance of which each member is charged 5¢ per car on the livestock handled. This radio broadcast is in the nature of a joint advertising venture on behalf of Exchange members.

91. Livestock salesmen carry on a considerable volume of correspondence with their customers and thus maintain contacts regarded as so necessary in the commission business. Most of the firms keep a list of customers and prospective customers. In addition to answering inquiries made by customers for market information, some of the firms at such times as they may deem suitable send letters dealing with market conditions which they consider of interest to their customers.

92. Respondents frequently entertain their customers, but a rule of the Exchange prohibits the giving of free meals in the West Bottoms, which is that part of the central industrial district of Kansas City in which the stockyard is located. Outside of this restriction, the amount

expended for entertainment is limited only by what each firm may deem expedient in its own case. Throughout the course of the year there are meetings and conventions of producers held in the trade territory of the Kansas City market. It has become customary for many of the respondents to send representatives to these meetings. Attendance thereon affords an opportunity to meet and talk with the producers of livestock. In addition, respondents make special trips to the country for the purpose of soliciting business. Those respondents who are members of the Exchange are prohibited by its rules from employing traveling or livestock solicitors. Only individual bona fide stockholders of corporations and salesmen or buyers of livestock on the Kansas City market, regularly employed in the commission business at Kansas City, may solicit business for the market. Such persons cannot remain in the country on a soliciting trip more than 15 days in each month, subject, however, to certain exceptions in certain stated regions.

93. In an effort to get business many of the respondents have undertaken the rendition of definite services incident to the marketing of livestock, but not immediately associated with the service of buying and selling livestock on a commission basis at the Kansas City market. One of these activities is commonly referred to as "appraisal" or "inspection" work. Some of the shippers, those usually having more than a carload of livestock to be marketed, request members of respondent firms, or their salesmen, to come to [fol. 76] the country and look at their livestock. The object of the shipper in requesting this service is to get the opinion of the salesman as to whether the livestock is in condition to be marketed to best advantage and about what price it may be expected to bring. Frequently on such visits the salesman assists the producer in sorting his livestock and in loading it for shipment. A single shipper sometimes requests this service of more than one commission firm in order to get the benefit of the opinions of more than one salesman. These appraisal or inspection trips are made either by train or by automobile. In near-by territory it is usually done by automobile. These trips are made at the expense of the respondent firms. Inasmuch as this is a free service and respondent firms encourage shippers to avail themselves of it, it is increasing.

94. Several sheep and cattle feeding yards are located near Kansas City to which some shippers send their cattle and sheep to be held and fed anticipatory to marketing it either at such feed yards or at the Kansas City stockyard or some other livestock market. It is customary for the owners of such livestock to ask the commission firms to look after it. The owners often accompany it. Respondents make trips, sometimes with the owners, to these feeding yards to look over the livestock and render sundry services in connection with it, such as sorting, supervising and feeding it and arranging for shearing of sheep and the selling of the wool, if shearing is deemed necessary. No separate charge is made for these services. At the time of the second hearing in this case cattle and sheep were being bought and sold at some of these neighboring feeding yards.

95. The leasing of pasture land for the use of those customers who have cattle to graze has become an important activity for some of the respondent firms. The Kansas City market is near the Flint Hill section of Kansas and the Osage country of Oklahoma, which are extensive grazing areas. Many stockmen throughout the Southwest request their commission firms at the Kansas City market to obtain pasture for them in these grazing regions. The respondent firms that render this service make it a point to keep informed in regard to the available pastures, in order that ready contact may be made with the owners of these grazing lands. A commission firm rendering this service goes out to inspect the pastures in order to determine the condition of the grass, the water supply and the character of the fences, and then reports to the customer. The commission firm also furnishes a form of pasturage contract, which is used when the owner leases the land. After the lease has been made and the owner has shipped this livestock to the pastures, a representative of the commission firm is usually present when the cattle arrive in order to look after the interests of the owner. While the cattle are grazing frequent trips are made by the interested commission firm for the purpose of inspecting the cattle, the condition of the grass, and the supply of water. Another inspection of the cattle generally is made before shipment to market. No separate charge is made for this service which is rendered in the hope that the commission firm rendering it will receive the livestock for sale on the Kansas City

market. It sometimes happens that this livestock is shipped elsewhere or, if to the Kansas City market, to some other firm than the one which has rendered the service.

96. Some of the respondent firms engage in making loans on livestock. Such firms either loan their own money or [fol. 77] negotiate loans through a bank. They may act as the endorser of livestock paper. In those cases in which they endorse the paper, the interest charged is about one per cent above that which prevails in the market. This represents a charge by the commission firm for its services and for underwriting the risk involved. In connection with making loans on livestock it is usually necessary to make an inspection of it. Most of the loans are made at the time the livestock is purchased at the market. In this event the work of inspection does not involve a great deal of time or expense since the details are handled by the regular office force. The respondents do not contend that the livestock loan business is a part of the commission business, but they do contend that it is a business-getting venture and that the expense incurred in connection with it is one properly incurred in the conduct of the commission business.

97. The business-getting efforts of those who buy livestock on order are not so varied. They advertise in papers to some extent and make occasional trips to call upon their customers. Contact by telephone and telegraph is the principal means used by them in getting and maintaining their volume of business.

XIII. Joint Activities of the Respondents

98. With the exception of the two cooperative commission firms and several individual order buyers operating on a small scale, respondent firms maintain the Kansas City Livestock Exchange, which is a voluntary organization not conducted for profit. The object of this association is to maintain uniform customs and certain standards of trade ethics, more particularly outlined in the rules formulated by it. All members of the Exchange are required to observe these uniform rules. The membership of the Exchange is composed of those who engage in the commission business at the market and such others as were once engaged in such business and who have become inactive but have retained their memberships.

99. There exists also an arrangement between the members of the Exchange and the respondent cooperative firms known as a trade practice agreement, whereby the latter two firms, by meeting certain conditions, such as the giving of bonds and agreeing to abide by certain disciplinary measures, can avail themselves of certain facilities maintained by the Exchange. The Exchange is registered as a market agency engaged in rendering certain miscellaneous services, including particularly hog inspection and dockage. It is not a respondent in this proceeding and the reasonableness of its rates for services is not a subject of inquiry here.

100. The Exchange maintains a system of hog inspection and dockage whereby it employs men to inspect these animals for conditions of health and for certain physical conditions which may exist in some hogs, for which a deduction from the agreed price will be made. The rules of the Exchange definitely prescribe the procedure. If there is dissatisfaction with the docker's decision, an appeal may be taken to the chief inspector whose decision is final unless an arbitration is called for. The person who calls the arbitration is charged $1.50. A charge of 20¢ is made on each car of hogs arriving at the market for sale, and a prorata charge is made on truck receipts of hogs to cover the expenses of hog inspection and dockage. This charge is deducted from the proceeds of sale of hogs.

[fol. 78] 101. The Exchange maintains a clearing house which serves as a central office for the convenient handling of bills rendered and accounts collected. Each firm pays for the use of this facility according to the volume of business handled. The cooperative firms also avail themselves of this service.

102. The Exchange procures and maintains a policy of insurance, protecting livestock against fire while it is in the yard. One-half the premium is deducted from the proceeds of sale of livestock. Traders, packers, and order buyers also make a contribution to a fund used to maintain this insurance. Those agencies which are not members of the Exchange maintain their individual insurance policies and do not enjoy the protection of the blanket policy carried by the Exchange for its members. The collections by

the Exchange exceed the premiums, and this excess goes into the general fund.

103. The Exchange has an agricultural development fund. Members are assessed 10¢ per car on inbound shipments, 6¢ per car on livestock bought on order, and 6¢ per car on livestock cleared through brokers. This fund is used in general promotional work, such as livestock sanitation, boys' and girls' club work and fairs.

104. On March 1, 1930, the Exchange began making an assessment of 5¢ on each inbound car of livestock sold, to support the radio broadcasting conducted by it. This charge is made against those firms which are members of the Exchange. The Exchange also assesses each firm 2¢ per car on all inbound rail receipts to maintain its transportation department. The purpose of this department is to look after train service and the relationship of freight rates as between Kansas City and other markets. The respondent cooperative firms are assessed for this purpose, pursuant to the trade practice agreement.

105. The Exchange charges $3 per month per membership for the purpose of building up a fund to retire the certificates of membership of deceased members. This is governed by the rules of the Exchange. The Exchange has organized an independent association, composed of members of the Exchange, known as the Kansas City Live Stock Exchange Employees Association. It has the same officers as the Exchange and is founded and operated under the insurance laws of New York. Contributions to this are made on an individual basis, and the expenses of the association are borne by assessments against individual members.

XIV. Risks Incurred in the Commission Business

106. The record in this proceeding shows the character of the risks to which the respondents are subject in the conduct of their business. These risks are of two general types, namely, those which result in losses of sufficient frequency and definiteness to make it possible for insurance companies to calculate on an actuarial basis the premiums necessary to be charged and those which occur so infrequently and are so indefinite in character as to make this impossible. The former class of risks is insurable, while

the latter is not. Insurance premiums paid enter into the expenses of the respondents. The losses incurred on account of uninsurable risks constitute items to be provided for in the reasonable profit allowable over and above reasonable expenses. The respondents claim that these risks [fol. 79] affect both their revenues and their expenses. Among those which affect their revenues are the possibility of decline in the production of livestock within the trade territory of Kansas City and the growth of direct buying by packers in that area. Among those risks affecting unfavorably the expenses of conducting their business the respondents enumerated the following: their guaranty against defects in title to livestock sold by them; errors entering into accounting processes; failure of producers to make payment; losses through litigation on account of bank failures; freight undercharges; sales of diseased and defective livestock; loss or damage to livestock while in their custody; public liability; liability to employees; and loss of property through fire. Against insurable hazards most of the respondents carry some insurance but there are others who choose to carry this risk themselves.

107. The respondents are forced by the conditions which surround the conduct of their businesses to carry some of the risks themselves. While the livestock commission business is theoretically a cash business, it frequently happens that respondents make remittances before they have received payment for livestock sold. If the buyer is a regularly registered agency at the market, other than a packer buyer, the payment for the livestock is guaranteed under the buyer's bond. If, however, the buyer is not bonded, there is an element of risk in a sale to such a person in that the purchaser for some reason may not settle for the livestock purchased. It sometimes happens in connection with sales of livestock to a countryman who gives his check or in case of a sale to those who purchase on order that the commission man turns over to the owner the proceeds of sale before collection is made from the purchaser. Besides this, there is also an element of risk involved in the remittance of proceeds to the shipper in that litigation may arise in connection with the failure of a bank in which proceeds have been deposited. Other risks which may be classed as uninsurable are those arising from bad debts, errors, and adjustments which cannot be avoided even by

reasonable precaution, losses on account of making loans, and other items of like character. Bad debts are usually incurred in connection with loans made or credit given to those for whom purchases are made, or the honoring of drafts drawn by shippers before livestock has been sold, the proceeds of the sale of which do not equal the amount of the draft. There is also the possibility of injury to livestock while in the custody of the commission firms resulting from the negligence of the commission firm or its employees. Inasmuch, however, as each commission firm endeavors to render the highest class of service and handle livestock in the most humane manner, the risk of loss from this source is practically negligible.

XV. Economic Changes Since the Year 1929

108. The re-hearing was granted in this proceeding upon the ground alleged by the majority of the respondents in their petitions therefor, namely, that changed economic conditions since the original test year, 1929, had rendered the experiences of that year insufficient as a basis for the determination of reasonable rates. It becomes pertinent, therefore, to note herein the changes shown of record and noticeable under the doctrine of Atchison, Topeka, and Santa Fe Railway Company v. U. S., 284 U. S. 248, which have occurred between the year 1929 and the close of the record in the last *yearing* in this proceeding. They may be discussed, as three general classes, namely (1) general [fol. 80] changes affecting the country as a whole; (2) general changes affecting the livestock industry; and (3) particular changes affecting respondents' businesses and revenues.

109. The general economic changes are, in brief, that beginning in the year 1929 the business life of the country has descended from one of the highest levels of activity and prosperity ever known to one of the most severe depressions in our entire national experience. Values of tangible property and of investments, as well as incomes, salaries, wages, and commodity prices have descended to levels lower than were thought in 1929 hardly to be possible.

110. The effect of the general depression was felt severely in the livestock producing industry. Whereas in De-

cember, 1929, the monthly average prices at Kansas City of slaughter steers ranged from $9 to $14 per 100 lbs.; of hogs from $7 to $9; and of slaughter lambs from $9 to $12; depending upon weight and grade, the comparable prices for December, 1931, were: slaughter steers, $3 to $10; hogs, $3 to $4; and slaughter lambs, $3 to $5. It was testified by some of the respondents that at times since the year 1929 the livestock market at Kansas City was so demoralized by lack of demand and consequent low prices that they advised their patrons to withhold shipments of livestock even though so doing tended to decrease the respondent's own revenues.

111. In its effect on the prosperity of the respondents' businesses the general depression manifested itself principally in a decline in the volumes of livestock received by them for sale or bought by them on commission. As illustrative of this, their total revenue producing fresh receipts of livestock were for 1929: cattle, 1,743,165; calves 273,577; hogs 2,140,170; and sheep 1,673,705 heads; while for 1931 they were: cattle 1,580,290; calves 236,727; hogs 1,102,425; and sheep 1,817,611 head. There were, of course, corresponding declines in revenues, except in the case of sheep where the increased volume produced a greater revenue. The record having been closed in November, 1932, receipts for the entire period of that year are not available. However, those for the first seven months thereof were not quite as great as during the similar period of 1931.

112. In the year 1932, partly, at least, as a result of the general depression and the unfavorable economic condition of their patrons' businesses, respondents reduced their rates to some extent.

113. Notwithstanding the unfavorable business conditions and lowered receipts in 1931, as compared with 1929, few of respondent firms operating in both of those years showed any substantial reduction of personnel in the former as compared with the latter. Also, few firms made any substantial reduction in salaries and wages sufficiently early in the year 1931 materially to affect their cost of doing business as shown in the audits covering that year. Such decreases as were made took place largely in the latter part of the year 1931 and in the year 1932. The general impression gained from the record is, however, that

respondents, in the face of almost universal lower levels in the United States, are attempting to maintain their personnel and the salaries thereof at the levels obtaining in the more prosperous year, 1929. This necessarily has a depressing effect upon the net moneys available to the owners of these businesses which may be designated "net owner incomes."

[fol. 81] XVI. Principles Governing Determination of Reasonable Commission Rates

114. The Packers and Stockyards Acts provides that if, after investigation, the Secretary of Agriculture finds commission rates in effect at a livestock market to be unjust, unreasonable, or discriminatory, he shall prescribe rates that are just, reasonable and non-discriminatory, or the maximum or minimum rates, or the maximum and minimum rates, which are just, reasonable and non-discriminatory. In arriving at such a schedule it is necessary to adopt a guide to reasonableness. The guide adopted in this case is that under ordinary conditions as they prevail on the Kansas City market, a schedule of rates should be high enough to produce sufficient gross revenues to pay all reasonable costs and a reasonable compensation for management and risk, that is, a reasonable profit, to the owner or owners of any firm which receives enough livestock to enable it — handle its business in a reasonably efficient and economic manner. This principle was followed in the Omaha Commission Rate Case, and was approved by the Supreme Court of the United States in the case of Tagg Bros. and Moorhead, et al., vs. United States (280 U. S. 420). It becomes necessary, therefore, in following this guide to determine the reasonable costs to the respondents of handling each species of livestock.

XVII. Cost Occasioning Factors

115. There is a relationship between those factors which occasion work for respondents and their employees and the costs to respondents of rendering the services for which they charge the rates. This relationship, however, is not so direct as to bring about an increase in cost whenever an increase in work arises. This is due to the fact that in many instances the major functions of those engaged in perform-

ing the activities of respondents can be carried on only at certain times. For instance, a salesman cannot sell livestock except when the market is open and more or less active, notwithstanding the volume of livestock which he has for sale. On the other hand, the type of men who make good salesmen would hardly be content to accept less salaries in consideration of short hours. They demand and get good pay and are willing to return therefor a reasonable days' and weeks' service. Therefore, the fact that, prior to the selling hours they assist in the yards and that, during the last one or two days of the week they go to the country to appraise livestock and solicit business do not increase the respondents' expenses for salaries. Therefore, in the distribution of costs hereinafter made to functional accounts, the services of a salesman, for instance, are not divided as between selling, yarding, office work and business getting and maintaining, but are considered as being covered by the reasonable allowance for salesmanship. The same is true in principle with respect to the salaries of other workers such as yardmen and those who are engaged in the office.

116. The cost occasioning factors will as a rule be found to consist of those activities which require the employment of a personnel in the handling of a given number of animals. For instance, since each consignment, however large or small it may be, must be yarded, sold, weighed and accounted for as a separate unit, the greater the number of consignments contained in each hundred thousand of animals handled by a respondent firm the greater will be the [fol. 82] personnel and resultant cost required for such handling. To a less degree the same is true with respect to the number of drafts and of owners and of account sales to the hundred thousand of animals handled. The accompanying table, considered in conjunction with the unit cost per firm of handling the various species of livestock according to modes of arrival, is an illustration of these facts. The accountants' analyses hereinafter described indicate that the greater unit costs attach to livestock coming in with species mixed in a car or in motor trucks or received as so-called "seconds" in the yard and the lesser unit costs attach to the livestock which arrives in railroad cars without species being mixed. This table shows that in the case of cattle, for instance, those coming by straight rail, single

ownership, average for the market as a whole 45 head per owner and 45 head per account sale, which is practically equivalent to per consignment, and 11 head per draft, whereas the mixed rail, single ownership, average only 33 head per owner and 30 head per account sale and approximately 3 head per draft; the drive-ins average 4 head per account sale and 4 head per owner and 2 head per draft; and the seconds average 8 head per account sale and 8 head per owner and less than 4 head per draft. The differences in unit costs hereinbefore discussed have occasioned classifications in rates based on the mode of arrival, but both the testimony of some of the respondents and the conclusions to be drawn from the analyses of the accountants lead to the further conclusion that costs do not depend upon the vehicle in which the livestock was transported to market or the company it kept on the road, but rather on the number of head contained in, the number of owners to, and the number of drafts necessary in each consignment. The table here discussed follows:

[fol. 83] XVIII. Preparation for the Determination of Costs

117. In preparation for the determination of costs in this matter the Government caused to be made an audit of the business done by each respective respondent firm (including corporate and individual respondents) during the year 1929 and, when a re-hearing had been granted, caused to be made similar audits covering the year 1931. These audits were made by trained and experienced accountants, under the supervision of a chief accountant, from the books and records of the respondents. In each instance the year chosen was the last complete calendar year preceding the hearing. The marketing of livestock at Kansas City is such as to render the full calendar year the fairest accounting period. One, among other reasons for this, is that the calendar year presents a complete cycle of marketing of the various classes and grades of livestock. The factors which may occasion light runs at one period of the year are apt to cause correspondingly heavy receipts at another.

118. While in preparation for each hearing it was only practicable to audit the businesses for one calendar year, much information concerning the conditions which affect re-

spondents' businesses and covering a period of many years was obtained and placed in the record. Particularly among these was a showing of the volume of livestock received at the Kansas City stockyard year by year from 1882 to 1931, both inclusive, and month by month from January to September, both inclusive, of the year 1932.

119. In recognition of the fact that the rates prescribed will affect the respondent firms severally and not collectively, it is considered that the several experiences of more than 60 firms, occurring under conditions similar to those which may be expected to prevail when the rates have gone into effect, is more pertinent than would be the experiences of one firm over a number of past years, the circumstances and conditions of many of which long ago have ceased to exist. The audits so prepared were accepted by the respondents as constituting true reflections of the facts disclosed by their books and records of account for the periods covered, though they contended that some items of cost incurred in their business were not shown on their books.

120. From those audits, the Government's chief accountant prepared for the year 1929 a functional cost analysis on a unit basis; that is to say, the audits and auxiliary data indicated the allocation directly to each species of livestock of a large percentage of the total cost incurred by each respondent firm. The remaining cost, which could not be allocated directly, was distributed by the accountant on what he considered appropriate bases.

121. He made a similar analysis covering the year 1931 and for that year also a further analysis, commonly called a "differential study," whereby he broke down the total cost per function and per species and distributed it over the various modes of arrival within each species for each particular firm, to the end that he might discover, for instance, how much it cost a particular firm to yard a hog arriving by motor truck as distinguished from the cost to the same firm for yarding a hog which came in by rail.

(Here follows 1 photo, folio 84)

	Straight Rail		Mixed - Cattle & Calves		Mixed - All Species				Buying	
	S.C.	P.C.	S.C.	P.C.	S.C.	P.C.	Drive-Ins	Seconds	Rail	Drive-Outs
Cattle:										
Cars	31,231	6,112	5,954	3,751	543	401	-	-	14,275	-
Decks	31,231	6,112	5,964	3,751	543	401	-	-	14,275	-
Head	867,253	180,568	197,080	122,531	17,136	12,958	182,764	105,769	491,041	24,908
Drafts	72,509	34,309	45,917	40,661	5,851	6,527	89,737	31,789	43,226	5,963
Owners	18,865	10,876	2,630	8,810	506	2,779	45,441	13,724	10,423	2,365
Account Sales	18,932	9,950	2,650	7,294	508	2,032	45,441	13,724	10,423	2,365
Head per Draft	11.96	5.26	4.29	3.01	2.93	1.99	2.04	3.33	11.36	4.18
Head per Owner	45.97	16.60	74.93	13.91	33.36	4.66	4.02	7.76	47.11	10.53
Head per Account Sale	45.91	18.15	74.37	16.82	33.67	6.38	4.02	7.76	47.11	10.53
Calves:										
Cars	244	23	1,188	592	106	87			471	
Decks	248	23	1,188	592	106	87			471	
Head	14,035	1,228	73,170	36,804	6,885	5,894	98,911	14,987	28,726	4,319
Drafts	623	83	15,421	12,120	3,119	3,546	65,503	5,288	1,373	1,168
Owners	151	30	2,573	4,770	294	2,110	41,010	1,988	423	403
Account Sales	151	28	2,591	4,109	295	1,311	41,010	1,988	423	403
Head per Draft	22.52	14.79	4.74	3.02	2.21	1.66	1.51	.53	20.92	2.94
Head per Owner	92.95	40.93	28.43	7.97	23.42	2.79	2.41	7.56	67.91	10.72
Head per Account Sale	92.95	47.23	28.35	8.91	23.34	4.50	2.41	7.55	67.91	10.72
Hogs:										
Cars	3,145	1,119			748	634			478	
Decks	3,266	1,159			750	647			722	
Head	235,335	83,875			55,671	49,388	678,156	84,673	65,579	23,526
Drafts	12,849	9,328			6,007	8,476	89,095	8,842	1,589	994
Owners	3,007	5,488			529	5,123	89,587	3,710	407	489
Account Sales	3,006	4,969			531	4,072	89,587	3,710	407	489
Head per Draft	18.32	8.99			9.26	5.83	7.61	14.49	41.30	23.67
Head per Owner	78.26	15.28			105.24	9.64	11.38	22.82	161.12	48.11
Head per Account Sale	78.28	16.97			104.84	12.13	11.38	22.82	161.12	48.11
Sheep:										
Cars	5,481	820			48	23			456	
Decks	10,481	1,491			49	24			802	
Head	1,371,805	192,452			6,481	3,399	243,474	2,154	113,338	8,906
Drafts	10,680	4,699			479	374	20,674	112	876	345
Owners	8,225	2,243			59	208	16,635	68	372	229
Account Sales	3,221	1,627			59	133	16,626	68	372	229
Head per Draft	128.44	40.95			13.53	9.09	8.20	19.23	129.37	25.91
Head per Owner	425.37	85.30			109.84	16.58	14.64	31.67	304.66	38.89
Head per Account Sale	425.89	118.28			109.84	25.56	14.64	31.67	304.66	38.89

[fols. 85 & 86] 122. In preparation for both the first and the second hearing the great majority of the respondents employed a trained and experienced accountant who prepared for each of the years 1929 and 1931 analyses similar in purpose to those above described as having been made by the Government accountant, and based them on the same audits. At the first hearing the accountants for the Government and for the respondents, respectively, were in disagreement as to the bases to be used in making indirect allocations or distributions of costs, such as administrative and general expenses, but at the second hearing respondents' accountant, while not endorsing the bases employed by the Government's accountant, did not regard it as worth while to controvert them.

XIX. Items Entering Into Costs

123. Each of the accountants, in making his analysis of the business of the respondents, established a classification of expenses and assigned to it certain items. The classifications are as follows:

Government Accountant	Respondents' Accountant
Salaries:	Salaries and Wages:
Selling and Buying.	Selling and Buying.
Yarding.	Yarding.
Business Getting and Maintaining.	Business Getting and Maintaining.
Office.	Office.
Administrative.	General Supervision.
Expenses:	Expenses:
Yarding.	Yarding.
	Selling and Buying (Horse Expenses).
Office.	Office.
Business Getting and Maintaining.	Business Getting and Maintaining.
Administrative and General.	Administrative and General.
Risk.	Risk.
	Commissions paid (Split Com.)

Items Entering Into Costs—Continued

Interest on Following Capital	Interest on Following Capital
Fixed Assets (including Exchange memberships).	Fixed Assets (including Exchange memberships).
Working Capital to cover: Operating Expenses.	Working Capital to cover: Operating Expenses and Handling Sales and Purchases.
	Investment in Methods and Practices.

* This item, "Commissions paid (Split Commissions)," is included by the Government accountant as a part of the item "Selling and Buying Salaries."

124. It will be observed that with respect to the items of cost, as distinguished from the method of arriving at the amounts of those items, the two accountants were in substantial agreement, except that respondents' accountant includes an item for interest on working capital necessary to handle sales and purchases, and he also includes an item of interest on capital invested in methods and practices. [fol. 87] Neither of these items is covered by the classification made by the Government accountant. Hereinafter, in determining reasonable costs, an allowance is made to cover each and every item common to the classifications of the two accountants; also, similarly, an allowance is made to cover interest on working capital necessary in handling sales and purchases. The methods and practices, the value of which is contended for by respondents as an element of capital, are classified by their accountant under three heads, namely, (1) mailing lists and customer records; (2) office methods, systems, etc., and (3) yard methods and practices.

125. The mailing lists and customer records comprise principally all the names and addresses of those who have patronized and are believed to be still in position to patronize the respective respondent firms who keep the lists. To a lesser extent they contain some names and addresses of those who have not yet patronized the firm keeping the list. These data are acquired and recorded as a part of the normal and usual conduct of respondents' businesses. They

are kept on a card or some similar form of record. Such records constitute a part of the property of the respective respondents who keep them. Therefore, their respective values, such as they may hereafter be found to be, are included as a part of respondents' invested capital.

126. The other matters listed as methods and practices constitute those common day by day routines used in the conduct of respondents' businesses, such, for instance, as the methods of yarding, sorting, selling, and weighing livestock in the yard and the practices of making out and transmitting account of sales to the patrons, remitting the proceeds of sale, and keeping records and other similar matters in the office. Respondents' theory is that if no such routines had been used by any one anywhere and respondents were compelled to employ persons to work them out, costs would be incurred in the discovery of them and further costs in the learning of them by respondents and their employees. Their accountant has arrived at some $66,000 as the total of such costs. These are apportioned among the various firms he represents. The respondents contend that the amounts apportioned to their respective firms should be regarded for rate making purposes as a part of the capital of such firms, interest on which, they say, should be included in the reasonable costs.

127. These items, namely, value of office methods and customs and value of yard methods and practices are not included in respondents' capital, a return of which is coverable into reasonable rates. The reasons for not including them are as follows:

128. They, like the common routines of everyday life generally, while very useful and practically indispensable, are not the property of anyone. They freely may be adopted and used by any who care to do so without the payment of any price or remuneration to any of the respondents in this proceeding. Knowledge of them is a part of the qualifications of respondents' various classes of workers, whether they be owners or employees. They are, in general, learned while the worker is engaged upon and performing other duties for which he is being adequately compensated. When, hereinafter, an allowance is made to cover the salaries of yardmen, salesmen, office workers, etc., it is not contemplated that it would be just or reasonable to

cover into the rates such salaries to be paid to men who [fol. 88] were not acquainted with the common routines necessary in the performance of their work.

XX. Reasonable Unit Costs Plus Reasonable Unit Profits to be Covered Into Reasonable Commission Rates

129. There are more firms and a larger personnel on the Kansas City market than are necessary to dispose of shippers' livestock effectively. A smaller number of firms than are now engaged could handle the business more economically. The Packers and Stockyards Act does not clothe the Secretary of Agriculture with authority to determine how many firms would be required to handle the business properly or what specific firms should be engaged in business or whether some firms are unwisely continuing in business. The Act directs him to prescribe reasonable rates. In order to do this some reasonable standard must be adopted. That adopted herein has already been stated in paragraph 114. In applying this standard it is necessary for the rate maker to inform himself with respect to whether each of the respondent firms is conducting its business economically to the end that the schedule of rates prescribed may not pass unnecessary expenses on to those who pay the rates.

130. Commission rate making is a matter of the exercise of well-informed judgment, guided by mathematical calculation. The importance of statistics and cost of operation of each of the respondents lies in the fact that they are a guide to judgment. In arriving at a reasonable allowance to cover the cost of separate functions, the experience of each firm is considered separately. The use of the mathematical average cost of all firms doing business, as a test of reasonableness of rates would carry into the rates, through the aggregate used in arriving at the average, all the unreasonable and extravagant expenditures, if any, incurred under the rates already in existence. Moreover, the unit costs of many of the firms are high because the volume of business coming to the market is divided among too many firms and handled by an unnecessarily large personnel. To consider as reasonable the average of the unit costs so incurred would compel the maintenance, at the expense of the rate payer, of all who wish to engage in the

business, even though the volume of business they can command be too small to warrant the organization necessary to handle it. In this connection, it is to be observed that while, for example, one salesman may be able to sell 30,000 head of cattle received by one firm, yet if the same volume be divided between two firms, two salesmen will be required. As a test of the reasonableness of rates, the adoption of the lowest costs incurred by the most economically conducted firm would result in a schedule so low as manifestly to be unreasonable as to some firms of normal efficiency. The adoption of the highest costs incurred by the least efficiently managed firms would result in a schedule so high as to be unfair to all shippers of livestock. This same situation obtains with respect to any functional item of expense incurred by any one firm. Since neither the average unit cost of all firms nor the experience of the most efficient firms, nor that of the most inefficient firms, can be taken as a guide to the establishment of rates, some other method of analysis must be adopted.

[fol. 89] 131. In general, the expenses incurred by commission firms fall into two classes: first, those which the conditions of the business tend to hold down, and, second, those which the conditions tend to increase. In arriving at a reasonable cost to be covered into rates in the case of those functions, the expenses of which are automatically held down, the costs as actually incurred by each of the firms should be considered and the reasonable cost arrived at, giving due consideration to the circumstances under which each of the respondents operates. In case of those costs which the conditions of the business tend to increase, such as the cost of salesmanship and the cost of advertising, expenses as actually incurred by any firm or by all of the firms do not furnish an adequate guide to the reasonableness of such cost. In arriving at a reasonable unit cost on account of these functions some additional procedure of approach has to be adopted. That used is discussed hereinafter in those paragraphs wherein the reasonable allowance is determined. The various functional unit items of cost, the findings as to the reasonable allowance for the various functions and the reasoning employed in arriving at the findings are set forth in the following paragraphs.

Salesmanship

132. An important item to be included in reasonable unit costs is a reasonable amount for salesmanship. This function is performed on the Kansas City market by owners of market agencies and by salesmen employed by them on a salary basis. Each of the accountants found unit costs of this item per species of livestock and also according to the respective modes of arrival.

133. Inasmuch as the selling and buying of livestock requires greater skill and judgment than the performance of any other of respondent's functional activities, with the possible exception of management, the proportion of owners as distinguished from employees, engaged in this activity is great. In some firms such owners agreed upon salaries which should be set up on the books for each and paid, if the net result of operations made it possible so to do. In others the owners had merely drawing accounts with division of net owner incomes at the end of a year or some other accounting period. In still others the owners merely divided whatever net owner income happened to arise from the operation. By "net owner income" is meant moneys arising from the operation of the business and available for the personal use of the respective owners, regardless of whether it be considered as compensation for services rendered or profits arising from the ownership of the business or a combination of the two.

134. While the accountant for the Government used, in ascertaining the unit costs of salesmanship, the salaries, drawing accounts and profits of owner salesmen, as well as the salaries of those who were employed, he neither attempted to pass upon the reasonableness of such salaries, drawing accounts or profits of the owner-salesmen nor recommended the inclusion of those of the owners in the costs which are to be used as the basis of reasonable rates. In this proceeding it is not contended by anyone that these owner salaries, drawing accounts or profits should be used as an element of costs. When, however, they are eliminated, and nothing substituted, it causes the salesmanship costs of so many firms to appear extremely low or be absent altogether that no fair normal can be garnered from the unit costs of the remaining firms for this item. In these cir- [fol. 90] cumstances the question becomes one of deter-

mining the amounts to be substituted. The record in this proceeding suggests alternative methods. Respondents contend that there should be substituted an amount representing the personal value of each owner-worker as appraised by a committee selected by respondents. Government counsel argue that the unit cost of salesmanship should be ascertained by relating a reasonable annual salary for a salesman to a reasonable year's performance expressed in terms of the units sold, that is, carloads or head, as the case may be, as was done in Docket 143, the Omaha commission rate case, (See Tagg Bros. and Moorhead v. U. S., 280 U. S. 420) and in every commission rate order issued by the Secretary of Agriculture since that time.

135. In preparation for a hearing in 1929 and again prior to that of 1931, respondents had an appraisal of the owner-workers made by a committee. The committee which made the appraisal in 1929 consisted of six members, and that making the one of 1931 of eight members. These committees had before them the following classes of information: enterprise with which connected; office held or position occupied; number of active co-partners; proportion of personal time involved; manner in which such time employed and proportion devoted to various activities; term of experience in livestock commission business; term of experience in livestock industry; commissions earned by the enterprise; cash value of sales and purchases made to earn such commissions; and, the number of head of livestock handled by species and in total. These committees did not possess any peculiar qualifications for making this appraisal. Even if the appraisal of services such as these could be considered as a matter determinable by expert opinion, any generally well informed citizen with the information at his disposal which the committees had before them could make an equally trustworthy appraisal. But the rejection of the appraisal method rests upon a further and more fundamental ground in that this method seeks to place upon each respondent worker, by name, an annual value based upon such record of his past performance as was before the committee and above which it is unreasonable for him to earn, regardless of his future accomplishments and below which it is unreasonable to expect him to serve, regardless of the small amount of service he

renders. This would seem to be a clear-cut example of the wage fixing condemned in Wolff Packing Co. v. Industrial Court, 262 U. S. 522. As contrasted with this, the performance method urged by Government counsel places no limit, either by way of maximum or minimum, upon the amount of annual compensation which reasonably an owner-salesman may earn. It finds a reasonable compensation to the respondents for the performance of a unit of salesmanship, whether it be done by owner or employee, and leaves the firm in position to expand or contract its reasonable income as it proves successful or unsuccessful in multiplying the units of salesmanship performed. To illustrate, if a fair annual salary be taken as $4000 and a reasonable full year's performance as the sale of 29,000 head of cattle, then the reasonable allowance for salesmanship will be 13.79 cents per head and the owner who is able to sell 35,000 head will be entitled to a compensation of $4,826.50, while one who succeeds in selling only 20,000 head will be entitled only to $2758.

136. The record in this case contains all the information which the committees had before them and in addition many other facts pertinent to the determination of the cost of such services as are performed by owners, among which are the prices at which services such as those rendered by the owners are being bought and sold for on an open, competitive market. Such prices are the test generally re- [fol. 91] garded as proper measures. The record contains some facts which furnish a partial test of the appraisals. Some of the owners whose services in their respective business were appraised by the committee in 1929 later became employees on a salary basis at figures much below those at which their services were appraised. One such owner, a cattle salesman, whose services were appraised by the committee at $4,000 in 1929 was receiving in 1932 a salary of $1700. Another cattle salesman whose services were appraised at $3000 in 1929 was receiving a salary in 1932 of $1800. In another case a hog salesman whose services were appraised at $2500 in 1929 was employed as a cattle yardman in 1932 at a salary of $875.

137. The evidence shows that an important element influencing the value placed by those committees upon the services of owners was the business drawing power of the

owners. These appraisals include also elements on account of risk bearing and executive functions exercised by the owners. All these elements are considered elsewhere and a reasonable allowance made for them in the determination of reasonable unit costs.

138. Since neither owners' salaries, as set up on the books, nor the appraised value of owners' services can be accepted as determinative of the unit costs of salesmanship, some other method must be adopted. That here used is the ascertainment of what the salesman's services are selling for and relating these to what, according to the record, constitutes a reasonable year's work. The salesmanship to be provided for in this order contemplates that it will be of high character, whether performed by owners or by salesmen employed by them. The shipper is entitled to have his livestock sold by the most efficient and competent salesmen available on the market. Such salesmen, whether owners or employees, are entitled to receive a fair reward for their ability and services. An owner, while entitled to reasonable remuneration for management and the assumption of risk, which are ordinarily referred to as profit, is not entitled merely because he is an owner to more for the act of selling livestock than it would cost to get some other equally efficient salesman to perform the selling service for him.

139. The record contains the number of employed salesmen on the yards in 1929 and in 1931, together with the salaries they drew. There were in 1929, 122 employed cattle salesmen, 42 employed hog salesmen, and 11 employed sheep salesmen on the Kansas City market. In 1931 there were 133 employed cattle salesmen, 46 employed hog salesmen, and 14 employed sheep salesmen. The following table shows by salary range the number of salesmen of the various species in the two years and the salary grades into which they fall:

Cattle Salesmen	1929	1931
No. receiving, $6,000 or more	6	4
5,000 to 6,000	3	5
4,000 to 5,000	13	9
3,000 to 4,000	38	32
2,000 to 3,000	30	50
Less than 2,000	32	33
Total	122	133

[fol. 92]

Hog Salesmen			
No. receiving,	$9,300	1	none
	8,800	none	1
	5,095	none	1
	$4,000 to 5,000	2	1
	3,000 to 4,000	10	4
	2,000 to 3,000	16	20
	Under 2,000	13	19
	Total	42	46
Sheep Salesmen			
No. receiving,	7,000	1	1
	4,970	1	none
	4,887	none	1
	4,800	1	none
	$3,000 to 4,000	4	2
	2,000 to 3,000	3	6
	Under 2,000	1	4
	Total	11	14

In order to earn these salaries the employed salesmen performed actual selling and handling livestock in the yards, and spent time in the country doing appraisal and publicity work. The record does not show for employed salesmen the amount of work done by any individual. The average number of head per salesman sold during the course of the year by the salesmen of a firm does not furnish a measure of the ability or the capacity of any individual salesman. The record contains opinions of salesmen as to what they consider a reasonable year's work on the Kansas City market where there are seasonable variations in the receipts of livestock and where the days of heaviest receipts come during the early part of the week.

140. A salesman employed by one of the respondents testified that a good salesman should sell 1,500 cars of cattle in a year. Another witness employed by a respondent stated that a good salesmen can sell well as much as 2,000 cars per year. Another, a respondent, stated that a butcher salesman could sell 1,600 cars of butcher stuff in a year, and should be able to sell that many cars of steers. He stated also that a hog salesman should sell more than 1,600 cars of hogs, and that a sheep salesman should sell from 1,500 to 2,000 cars of sheep. On one day during the first hearing a salesman who is a member of one of the respondent firms sold about 30 cars of cattle, most of which had been carried over from the previous day on account of an unsatisfactory market. It is the opinion of some of the salesmen that they could sell more livestock than they do

sell if they had the opportunity to exercise fully their selling ability.

141. The number of animals per straight car received by the various respondents varies somewhat according to the character of the business done, but the normal and usual number of head of cattle contained in a straight car is approximately 28 head, calves 57 head, hogs 75 head, and sheep 250 head.

[fol. 93] 142. Giving due consideration to the conditions under which salesmanship is performed on the Kansas City market, the volume of livestock handled by the respective firms and the estimates of salesmen as to what constitutes a reasonable year's work, it would be reasonable to expect a good and experienced salesman to sell in a year from 27,000 to 32,000 head of animals of the bovine species as they arrive at the Kansas City stockyard in the year 1931; a hog salesman from 75,000 to 100,000 head of hogs in a year; and a sheep salesman from 240,000 to 275,000 head of sheep.

143. If the selling of 29,000 head of cattle and calves, which is below the estimate of any witness as to what constitutes a reasonable year's work, be taken as the work to be done in order to earn a salary of $4000, which is in the high salary range being paid salesmen on the Kansas City market, the reasonable cost to the shipper on account of the function of salesmanship is 13.79 cents per head. Likewise, if the selling of 85,000 head of hogs be considered a reasonable year's work, and $3000, which is in the high salary range, be taken to be a corresponding remuneration, the salesmanship cost to the shipper on account of hogs is approximately 3.529 cents per head. If the selling of 250,000 head of sheep be considered to be a year's work for which a $3500 a year salary is compensatory, the reasonable per head cost to the shipper for salesmanship on account of sheep is 1.4 cents per head. On the basis of all the facts in the record it is found that the following constitute reasonable per head costs to be covered into rates on account of salesmanship:

Cattle and Calves	$.1379
Hogs	.0353
Sheep	.0140

Yarding Salaries

144. The handling of livestock in the yard occasions expenses on account of salaries paid to those who do the yarding. The accountant for the Government allocated yarding salaries direct to species. The per head cost of yarding salaries on account of each species, irrespective of mode of arrival, is shown in the following tables:

Cattle and Calves

Firm No.	No. of Head	Yarding Salaries	Firm No.	No. of Head	Yarding Salaries
66	3656	$.0064	16	26673	$.0699
34	52225	.0129	14	42094	.0706
67	454	.0140	12	67947	.0711
79	11360	.0278	26	30383	.0719
83	122107	.0279	65	40303	.0720
15	14983	.0311	63	128888	.0721
9	3113	.0388	75	25113	.0746
87	991	.0395	10	119514	.0781
35	61658	.0400	59	164860	.0784
30	23436	.0425	20	32320	.0811
54	185312	.0481	71	62038	.0818
61	10731	.0489	6	15841	.0830
[fol. 94]					
37	2122	$.0490	25	53312	$.0840
53	28568	.0496	51	22495	.0849
70	38967	.0517	29	25581	.0880
73	79012	.0531	4	35763	.0895
56	34058	.0535	82	110449	.1015
42	67492	.0565	36	86051	.1023
60	19205	.0584	84	67609	.1044
46	157432	.0619	19	12570	.1112
74	8750	.0621	78	10819	.1139
52	21690	.0642	72	2397	.1206
18	59107	.0650	77	23436	.1230
48	42359	.0665	13	63945	.1285
62	31539	.0666	7	15790	.1353
55	61113	.0676	17	11336	.1399
23	34942	.0682	76	9619	.1635
33	1479	.0695	11	1878	.2130

Hogs

Firm No.	No. of Head	Yarding Salaries	Firm No.	No. of Head	Yarding Salaries
82	30135	$.0059	10	96653	$.0305
29	12619	.0060	4	9552	.0309
67	6015	.0081	46	33474	.0316
34	16312	.0112	37	35	.0329
78	4738	.0136	26	20321	.0332
66	737	.0151	79	2969	.0355
70	13628	.0185	75	5134	.0358
48	5952	.0195	16	8498	.0357
59	70554	.0196	36	147922	.0364
52	6196	.0197	7	41090	.0366
18	11653	.0207	51	159184	.0367
84	2364	.0207	30	3489	.0395
77	10192	.0218	12	28132	.0400
61	9679	.0222	35	12017	.0421
87	399	.0228	13	40816	.0439
6	8168	.0228	73	34425	.0507
42	11442	.0230	15	20743	.0599
20	3727	.0235	9	19051	.0601

Hogs

Firm No.	No. of Head	Office Expenses	Firm No.	No. of Head	Office Expenses
76	8629	.0263	54	27122	.0632
63	150806	.0263	25	19201	.0641
71	20323	.0267	11	2990	.0710
62	15810	.0284	60	21164	.0721
83	4078	.0287	55	21227	.0760
56	8191	.0290	14	27819	.1112
65	7619	.0299	53	18764	.1241
17	6872	.0300			

[fol. 95]

Sheep

Firm No.	No. of Head	Yarding Salaries	Firm No.	No. of Head	Yarding Salaries
43	140481	$.0030	1	43274	$.0081
54	591028	.0034	5	209208	.0086
35	44036	.0041	87	96975	.0095
63	43330	.0051	59	205441	.0097
36	36575	.0065	61	991	.0105
44	267391	.0078	10	94843	.0156

On the basis of the foregoing and of the general information contained in the record, it is found that the reasonable and normal costs to be covered into rates on account of yarding salaries are as follows:

$.075 per head as to cattle and calves
.030 per head as to hogs
.008 per head as to sheep

Yarding Expenses

145. The per head cost of yarding expenses on account of each species is as follows:

Cattle and Calves

Firm No.	No. of Head	Yarding Expenses	Firm No.	No. of Head	Yarding Expenses
61	10731	$.0003	20	32320	$.0110
37	2122	.0009	84	67609	.0114
6	15841	.0014	77	23436	.0116
15	14983	.0026	55	61113	.0116
78	10819	.0028	53	28558	.0121
16	26673	.0040	17	11336	.0124
34	52225	.0045	10	119514	.0125
88	2897	.0051	26	30383	.0127
30	23436	.0054	36	86051	.0128
33	1479	.0054	18	59107	.0129
56	34058	.0075	51	22495	.0133
54	185312	.0078	25	53312	.0135
82	110449	.0080	14	42009	.0143
13	63945	.0082	83	122107	.0146
75	25113	.0082	29	25581	.0150
7	15790	.0084	52	21690	.0151
46	157432	.0084	48	42359	.0154
70	38967	.0090	23	34942	.0158
12	67947	.0093	42	67492	.0159
65	40303	.0095	74	8750	.0169
4	35763	.0096	63	128888	.0172
35	61658	.0100	60	19205	.0173
62	31539	.0103	71	62038	.0181
73	79012	.0104	19	12570	.0202
59	164860	.0105			

[fol. 96]

Hogs

Firm No.	No. of Head	Yarding Expenses	Firm No.	No. of Head	Yarding Expenses
14	27819	$.0001	10	96653	$.0004
48	5952	.0001	52	6196	.0005
54	27122	.0001	25	19201	.0006
61	9679	.0001	35	12017	.0006
83	4078	.0001	77	10192	.0006
36	147922	.0001	78	4738	.0006
4	9552	.0002	62	15810	.0007
6	8168	.0002	73	34425	.0007
7	41090	.0002	15	20743	.0009
18	11653	.0002	75	5134	.0010
34	16312	.0002	79	2969	.0010
55	21227	.0002	26	20321	.0010
59	70554	.0002	30	3489	.0011
63	150805	.0002	71	20323	.0012
46	33474	.0003	29	2619	.0012
82	30135	.0003	23	1536	.0013
13	40816	.0004	42	11442	.0014
20	3727	.0004	17	6872	.0015
51	159184	.0004	88	249	.0045
53	18764	.0004	65	7619	.0088
60	21164	.0004			

Sheep

Firm No.	No. of Head	Yarding Expenses	Firm No.	No. of Head	Yarding Expenses
18	3157	$.0001	60	753	$.0003
46	7795	.0001	82	2007	.0003
63	43330	.0001	53	733	.0005
73	4035	.0001	75	2487	.0005
36	36575	.0001	77	1635	.0005
13	5688	.0002	78	3432	.0005
35	44036	.0002	15	3854	.0006
55	3685	.0002	17	756	.0006
83	2380	.0002	26	2657	.0007
6	1220	.0003	29	734	.0007
20	872	.0003	71	1414	.0011
25	3676	.0003	30	533	.0046
51	6942	.0003	42	1460	.0130
52	4320	.0003	65	2184	.0131

On the basis of the foregoing and of the general information contained in the record, it is found that the reasonable and normal costs to be covered into rates on account of yarding expenses are as follows:

$.014 per head as to cattle and calves
.0060 per head as to hogs
.0004 per head as to sheep

[fol. 97]

Office Salaries

146. The per head cost on account of office salaries allocated to each of the species is as follows:

Cattle and Calves

Firm No.	No. of Head	Office Salaries	Firm No.	No. of Head	Office Salaries
6	15841	$.0010	46	157432	$.0550
17	11336	.0143	54	185312	.0558
83	122107	.0203	75	25113	.0567
71	62038	.0206	76	9619	.0570
14	42094	.0217	73	79012	.0575
34	52225	.0239	20	32320	.0628
35	61658	.0240	52	21690	.0629
42	67492	.0256	7	15790	.0631
53	28558	.0330	78	10819	.0656
13	63945	.0382	61	10731	.0692
63	128888	.0367	23	34942	.0693
82	110449	.0373	29	25581	.0707
10	119514	.0396	70	38967	.0730
62	31539	.0396	25	53312	.0734
30	23436	.0414	56	34058	.0810
55	61113	.0441	65	40303	.0879
77	23436	.0442	74	8750	.1002
26	30383	.0447	51	22495	.1150
60	19205	.0449	19	12570	.1192
12	67947	.0450	11	1878	.1195
59	164860	.0458	33	1479	.1385
18	59107	.0460	9	3113	.1472
79	11360	.0484	37	2122	.1567
48	42359	.0492	66	3656	.1629
36	86051	.0518	72	2397	.1784
4	35763	.0525	67	454	.1821
15	14983	.0529	88	2897	.1955
84	67609	.0534	87	991	.2117
16	26673	.0544			

Hogs

Firm No.	No. of Head	Office Salaries	Firm No.	No. of Head	Office Salaries
6	8168	$.0004	10	96653	$.0313
17	6872	.0076	52	6196	.0319
34	16312	.0115	78	4738	.0322
14	27819	.0117	70	13628	.0336
61	9679	.0146	59	70554	.0339
71	20323	.0152	67	6015	.0365
53	18764	.0181	12	28132	.0366
42	11442	.0189	65	7619	.0384
63	150806	.0194	11	2990	.0395
77	10192	.0195	20	3727	.0403
13	40816	.0198	46	33474	.0423
79	2969	.0209	16	8498	.0451
15	20743	.0210	75	5134	.0503
35	12017	.0214	23	1536	.0505

[fol. 98]

Hogs

Firm No.	No. of Head	Office Salaries	Firm No.	No. of Head	Office Salaries
51	159184	$.0229	54	27122	$.0514
73	34425	.0231	30	3489	.0518
4	9552	.0232	33	1690	.0537
76	8629	.0232	84	11944	.0553
7	41090	.0233	19	4497	.0579
60	21164	.0238	9	19051	.0585
55	21227	.0253	25	19201	.0604
18	11653	.0259	83	4078	.0614
36	147922	.0262	74	2364	.0685
62	15810	.0266	37	35	.0874
82	30135	.0270	56	8191	.0933
48	5952	.0278	72	1077	.0970
26	20321	.0292	87	399	.1030
29	12619	.0300	66	737	.1480
			88	249	.2100

Sheep

Firm No.	No. of Head	Office Salaries	Firm No.	No. of Head	Office Salaries
6	1220	$.0005	52	4320	$.0189
1	43274	.0013	36	36575	.0191
17	756	.0042	51	6942	.0194
59	205441	.0044	65	2184	.0195
44	67391	.0055	16	1570	.0199
54	591028	.0059	23	862	.0201
84	150283	.0067	55	3685	.0204
35	44036	.0068	12	3439	.0206
14	7365	.0071	62	3065	.0212
79	2273	.0074	7	1295	.0252
18	3157	.0078	46	7795	.0264
4	1896	.0095	78	3432	.0283
87	96975	.0102	60	753	.0284
43	140481	.0105	82	2007	.0284
5	209208	.0108	20	872	.0291
83	2380	.0110	25	3676	.0316
10	94843	.0113	34	190	.0341
76	1553	.0115	70	2507	.0346
63	43330	.0131	29	734	.0374
15	3854	.0135	67	580	.0388
73	4035	.0135	48	430	.0395
77	1635	.0149	19	1252	.0449
42	1460	.0158	11	175	.0490
56	4924	.0158	74	333	.0520
13	5688	.0162	33	805	.0676
61	991	.0165	30	533	.0689
71	1414	.0172	37	321	.0757
53	733	.0173	9	598	.0796
75	2487	.0181	66	283	.1609
26	2657	.0185	72	45	.1764

[fol. 99] On the basis of the foregoing and of the general information contained in the record, it is found that the reasonable and normal costs to be covered into rates on account of office salaries are as follows:

$.0525 per head as to cattle and calves
.0300 per head as to hogs
.0100 per head as to sheep

Office Expenses

147. The per head cost on account of office expenses allocated to each of the species is as follows:

Cattle and Calves

Firm No.	No. of Head	Office Expenses	Firm No.	No. of Head	Office Expenses
88	2897	$.0016	26	30383	$.0328
37	2122	.0017	78	10819	.0328
72	2397	.0091	46	157432	.0331
84	67609	.0138	61	10731	.0345
16	26673	.0147	70	38967	.0360
76	9619	.0158	77	23436	.0366
4	35763	.0163	75	25113	.0371

Cattle and Calves

Firm No.	Head No. of	Expenses Offices	Firm No.	Head No. of	Expenses Offices
59	164860	.0186	71	62038	.0379
67	454	.0190	34	52225	.0401
23	34942	.0214	30	23436	.0402
12	67947	.0217	15	14983	.0411
54	185312	.0219	73	79012	.0419
7	15790	.0222	35	61658	.0429
18	59107	.0232	62	31539	.0430
42	67492	.0236	6	15841	.0434
83	122107	.0236	82	110449	.0443
36	86051	.0238	60	19205	.0447
52	21690	.0251	19	12570	.0455
56	34058	.0269	79	11360	.0456
33	1479	.0272	14	42094	.0458
65	40403	.0279	20	32320	.0461
10	119514	.0290	13	63945	.0493
48	42359	.0291	11	1878	.0538
17	11336	.0292	74	8750	.0543
63	128888	.0292	29	25581	.0546
53	28558	.0301	51	22495	.0573
25	53312	.0302	87	991	.1042
55	61113	.0313	9	3113	.1947

Hogs

Firm No.	No. of Head	Office Expenses	Firm No.	No. of Head	Office Expenses
37	35	$.0011	42	11442	$.0175
88	249	.0016	12	28132	.0176
67	6015	.0038	11	2990	.0178
76	8629	.0048	55	21227	.0179
72	1077	.0049	6	8168	.0179

[fol. 100]

Cattle and Calves

Firm No.	No. of Head	Office Expenses	Firm No.	No. of Head	Office Expenses
61	9679	$.0073	34	16312	$.0193
4	9552	.0073	79	2969	.0198
7	41090	.0082	54	27122	.0202
33	1690	.0106	26	20321	.0215
51	159184	.0114	19	4497	.0220
36	147922	.0121	10	96653	.0229
65	7619	.0121	60	21164	.0237
16	8498	.0122	29	12619	.0239
52	6196	.0127	14	27819	.0244
18	11653	.0130	25	19201	.0249
83	4078	.0131	46	33474	.0255
59	70554	.0137	13	40816	.0256
84	11944	.0142	71	20323	.0280
63	150806	.0147	62	15810	.0288
17	6872	.0154	20	3727	.0295
23	1536	.0157	56	8191	.0310
77	16192	.0162	82	30135	.0311
78	4738	.0162	75	5134	.0330
15	20743	.0163	74	236	.0373
48	5952	.0164	35	120	.0382
53	18764	.0165	87	99	.0502
70	13628	.0165	30	480	.0503
73	34425	.0166	9	38	.0774

Sheep

Firm No.	No. of Head	Office Expenses	Firm No.	No. of Head	Office Expenses
37	321	$.0008	77	1635	$.0121
84	150283	.0017	35	44036	.0123
59	205441	.0018	83	2380	.0125
54	591028	.0023	25	3676	.0128
4	1896	.0031	33	805	.0133
76	1553	.0032	26	2657	.0138
18	3157	.0039	78	3432	.0140
67	580	.0041	55	3685	.0147
43	140481	.0042	14	7365	.0147
87	96975	.0050	42	1460	.0149
5	209208	.0053	46	7795	.0159
56	4924	.0053	53	733	.0161
16	1570	.0055	19	1252	.0171
44	267391	.0055	70	2507	.0173
65	2184	.0062	1	43274	.0181
23	862	.0063	6	1220	.0211
79	2273	.0070	13	5688	.0213
52	4320	.0076	11	175	.0217
17	756	.0082	48	430	.0218
61	991	.0082	20	872	.0223
10	94843	.0083	62	3065	.0234
7	1295	.0086	60	753	.0275
76	1553	.0089	74	333	.0275
72	45	.0091	29	734	.0289
[fol. 101]					
51	6942	$.0096	71	1414	.0314
73	4035	.0097	82	2007	.0323
12	3439	.0099	34	190	.0574
63	43330	.0099	30	533	.0671
15	3854	.0103	9	598	.1039
75	2487	.0118			

On the basis of the foregoing and of the general information contained in the record, it is found that the reasonable and normal costs to be covered into rates on account of office expenses are as follows:

$.0300 per head as to cattle and calves
.0175 per head as to hogs
.0050 per head as to sheep

Business Getting and Maintaining Expenses

148. The per head cost on account of business getting and maintaining expenses allocated to each of the species is as follows:

Cattle and Calves

Firm No.	No. of head	Business getting and maintaining expenses
76	9619	$.0058
66	3656	.0107
67	454	.0170
15	14983	.0219

Firm No.	No. of head	Business getting and maintaining expenses
37	2122	.0229
72	2397	.0241
9	3113	.0264
56	34058	.0371
65	40303	.0371
61	10731	.0377
23	34942	.0399
29	25581	.0455
17	11336	.0474
60	19205	.0489
48	42359	.0508
7	15790	.0519
16	26673	.0520
33	1479	.0540
79	11360	.0540
51	22495	.0543
36	86051	.0576
30	23436	.0581
87	991	.0599
55	61113	.0612
18	59107	.0628
77	23436	.0632
78	10819	.0639
46	157432	.0647
75	25113	.0656

[fol. 102]

Cattle and Calves

Firm No.	No. of head	Business getting and maintaining expenses
6	15841	$.0672
83	122107	.0677
34	52225	.0699
13	63945	.0714
84	67609	.0724
59	164860	.0732
25	53312	.0735
74	8750	.0750
71	62038	.0756
52	21690	.0763
20	32320	.0797
14	42094	.0780

Cattle and Calves—Continued

Firm No.	No. of head	Business getting and maintaining expenses
82	110449	.0819
26	30383	.0873
12	67947	.0884
54	185312	.0924
19	12570	.0974
73	79012	.1057
42	67492	.1112
70	38967	.1149
35	61658	.1188
4	35763	.1232
63	128888	.1262
53	28558	.1346
10	119514	.1448
62	31539	.1655
88	2897	.2783

Hogs

Firm No.	No. of head	Business getting and maintaining expenses
76	8629	$.0022
66	737	.0060
67	6015	.0082
9	19051	.0082
72	1077	.0104
15	20743	.0108
20	3727	.0130
56	8191	.0142
37	35	.0157
48	5952	.0161
61	9679	.0161
65	7619	.0163
59	70554	.0164
87	399	.0184
29	12619	.0191
78	4738	.0191
16	8498	.0235
17	6872	.0238
60	21164	.0238

Hogs—Continued

[fol. 103]

Firm No.	No. of head	Business getting and maintaining expenses
36	147922	$.0238
33	1690	.0240
79	2969	.0251
18	11653	.0252
84	11944	.0255
51	159184	.0259
70	13628	.0260
14	27819	.0261
77	10192	.0262
30	3489	.0265
7	41090	.0267
83	4078	.0268
34	16312	.0272
75	5134	.0277
25	19201	.0292
6	8168	.0302
54	27122	.0302
23	1536	.0309
46	33474	.0321
71	20323	.0324
19	4497	.0327
13	40816	.0340
55	21227	.0344
74	2364	.0344
4	9552	.0353
52	6196	.0373
12	28132	.0393
82	30135	.0394
63	150806	.0410
26	20321	.0421
73	34425	.0467
53	18764	.0490
10	96653	.0535
42	11442	.0544
35	12017	.0546
62	15810	.0773
88	249	.1834

Sheep

Firm No.	No. of head	Business getting and maintaining expenses
76	1553	$.0017
66	283	.0055
56	4924	.0058
15	3854	.0066
67	580	.0070
84	150283	.0081
20	872	.0091
73	4035	.0092
65	2184	.0093
87	96975	.0094
72	45	.0104
18	3157	.0111

[fol. 104]

9	598	$.0111
1	43274	.0116
16	1570	.0129
55	3685	.0131
48	430	.0140
54	591028	.0140
79	2273	.0141
37	321	.0142
75	2487	.0155
23	862	.0158
4	1896	.0163
46	7795	.0173
17	756	.0181
36	36575	.0181
5	209208	.0194
61	991	.0195
77	1635	.0195
78	3432	.0199
83	2380	.0199
29	734	.0204
12	3439	.0206
44	267391	.0208
25	3676	.0211
33	805	.0216
60	753	.0217
70	2507	.0219

Sheep—Continued

Firm No.	No. of head	Business getting and maintaining expenses
51	6942	.0229
59	205441	.0234
14	7365	.0236
7	1295	.0238
30	533	.0241
10	94843	.0246
13	5688	.0248
19	1252	.0254
52	4320	.0262
71	1414	.0263
35	44036	.0269
74	333	.0273
6	1220	.0279
63	43330	.0283
82	2007	.0305
26	2657	.0317
43	140481	.0323
53	733	.0353
42	1460	.0399
34	190	.0429
62	3065	.0651

An amount reasonably necessary for business maintenance is an item properly coverable into a schedule of reasonable rates. Any expenditure above this amount directed toward increasing the volume of business should be recouped from the additional business obtained. Competition [fol. 105] in the commission business is extremely keen and results in a race for getting business which does not manifest itself in a reduction of rates but consists largely in efforts by each market agency to take some of the business away from the other market agencies. Since the rates of most of the respondents are uniform, there is little inducement for the shipper to select one market agency in preference to another because of the rates charged. Business is attached in many cases by reason of ties of personal friendship; in other cases by the estimate of the character of services rendered. Each market agency holds its services out to be of the highest quality and endeavors to convince the shipper of this fact. Under these conditions the amount expended for business getting and maintaining

is limited only by what can be afforded under the existing rates, whatever they may be, and by such limits as the respondents impose upon themselves. If excessive expenditures on this account be covered into a rate schedule, every shipper pays to have himself persuaded to send his livestock to one commission firm rather than to another which presumably can serve him equally well. Moreover, as already pointed out, some of the expenditures incurred to get and hold business are covered in general expenditures and in the salaries of salesmen employed, in part at least, on account of the business which they control as well as on account of the salesmanship which they perform. On the basis of all the facts in the record it is found that the reasonable amount to be covered into rates and paid by the shipper on account of business getting and maintaining should not exceed 10 percent of the total reasonable cost, and reasonable profit.

Administrative and General Expenses

149. The per head cost on account of administrative and general expenses, namely, telephone and telegraph, directors' fees, legal and auditing, taxes, meals, clearing house, general and miscellaneous, allocated to each of the species, is as follows:

Cattle and Calves

Firm No.	No. of head	Administrative and general expenses
67	454	$.0038
72	2397	.0039
66	3656	.0039
37	2122	.0091
17	11336	.0101
56	34058	.0138
61	10731	.0141
9	3113	.0142
14	42094	.0164
15	14983	.0182
11	1878	.0187
62	31539	.0188
71	62038	.0209
76	9619	.0213
75	25113	.0220
65	40303	.0224
20	32320	.0229

Cattle and Calves—Continued

[fol. 106]

Firm No.	No. of head	Administrative and general expenses
26	30383	$.0229
16	26673	.0230
12	67947	.0241
13	63945	.0244
29	25581	.0245
30	23436	.0247
6	15841	.0250
52	21690	.0258
19	12570	.0261
34	52225	.0263
77	23436	.0265
46	157432	.0269
54	185312	.0270
25	53312	.0272
42	67492	.0275
48	42359	.0280
7	15790	.0282
33	1479	.0292
55	61113	.0293
70	38967	.0301
18	59107	.0309
82	110449	.0330
51	22495	.0331
53	28558	.0334
73	79012	.0351
36	86051	.0351
60	19205	.0356
59	164860	.0362
10	119514	.0389
23	34942	.0400
84	67609	.0405
79	11360	.0411
4	35763	.0448
63	128888	.0454
35	61658	.0499
74	8750	.0539
78	10819	.0580
83	122107	.0714

Cattle and Calves—Continued

Firm No.	No. of head	Administrative and general expenses
87	991	.0775
88	2897	.1156

Hogs

Firm No.	No. of head	Administrative and general expenses
67	6015	$.0008
72	1077	.0021
61	9679	.0030
66	737	.0036
17	6872	.0054
37	35	.0054
9	19051	.0057
11	2990	.0062

[fol. 107]

76	8629	$.0064
15	20743	.0072
14	27819	.0089
65	7619	.0097
29	12619	.0104
7	41090	.0105
33	1690	.0114
6	8168	.0116
77	10192	.0117
19	4497	.0126
62	15810	.0126
13	40816	.0127
34	16312	.0127
52	6196	.0130
73	34425	.0133
70	13628	.0139
20	3727	.0147
26	20321	.0155
71	20323	.0155
56	8191	.0159
48	5952	.0163
51	159184	.0166
55	21227	.0169
18	11653	.0173

Hogs—Continued

Firm No.	No. of head	Administrative and general expenses
79	2969	.0178
36	147922	.0178
53	18764	.0183
60	21164	.0189
16	8498	.0191
12	28132	.0195
75	5134	.0195
4	9552	.0199
42	11442	.0203
46	33474	.0207
25	19201	.0223
63	150806	.0228
82	30135	.0232
54	27122	.0250
59	70554	.0267
78	4738	.0285
23	1536	.0294
10	96653	.0307
30	3489	.0308
74	2364	.0368
87	150806	.0376
83	4078	.0396
84	11944	.0419
35	12017	.0445
88	249	.1249

[fol. 108]

Sheep

Firm No.	No. of head	Administrative and general expenses
67	580	$.0008
56	4924	.0027
54	591028	.0028
17	756	.0031
61	991	.0033
59	205441	.0035
87	96975	.0037
43	140481	.0037
66	283	.0039
72	45	.0040

Sheep—Continued

Firm No.	No. of head	Administrative and general expenses
76	1553	.0043
46	7795	.0043
37	321	.0044
15	3854	.0046
65	2184	.0050
5	209208	.0051
84	150283	.0051
18	3157	.0052
14	7365	.0053
79	2273	.0064
75	2487	.0070
11	175	.0078
52	4320	.0078
73	4035	.0078
9	598	.0079
16	1570	.0080
4	1896	.0086
77	1635	.0088
1	43274	.0092
26	2657	.0093
19	1252	.0098
62	3065	.0102
13	5688	.0105
12	3439	.0110
7	1295	.0110
20	872	.0111
10	94843	.0111
23	862	.0118
25	3676	.0120
6	1220	.0122
29	734	.0125
46	7795	.0129
55	3685	.0131
36	36575	.0131
51	6942	.0139
33	805	.0142
35	44036	.0143
70	2507	.0145

Sheep—Continued

[fol. 109]

Firm No.	No. of head	Administrative and general expenses
63	43330	$.0154
71	1414	.0174
53	733	.0179
48	430	.0210
60	753	.0219
82	2007	.0241
78	3432	.0250
74	333	.0290
83	2380	.0377
30	533	.0411
34	190	.0418
42	1460	.0519

On the basis of these facts and all the information contained in the record, it is found that the following are reasonable per head costs to be covered into rates on account of administrative expenses:

$.0330 per head as to cattle and calves.
.0200 per head as to hogs.
.0050 per head as to sheep.

Insurance.

150. Many of the risks incident to the conduct of the commission business are insurable; others are not. The expenses on account of premiums paid to carry insurable risks are costs properly coverable into a reasonable schedule of commission rates. Mortgage and theft, fire, and workmen's compensation insurance are the three types most generally carried by the respondents. The expenses on account of carrying these types of insurance are ascertainable and can be expressed in terms of per head costs in the case of each species. Mortgage and theft insurance premiums are quoted by insurance companies in standard cars defined as "25 head of cattle, 60 head of calves, 80 head of hogs, and 100 head of sheep." The rates are 10 cents per carload of livestock irrespective of species. This is $.00357 per head for cattle; $.00125 per head as to hogs; and $.001 per head as to sheep.

151. Workmen's compensation insurance is optional in the states of Missouri and Kansas, in which the respondents conduct their business. Some of the respondents carry this type of insurance; others do not. Nevertheless, it is a legitimate cost to be provided for. A sufficient allowance should be made in the rates prescribed to enable each of the respondents either to carry this type of insurance or to set up a reserve against losses incurred. The cattle facilities of the stockyard company, where the majority of the respondents carry on their business, are located mainly in the State of Missouri, while the hog house is located in the State of Kansas. The auditor for the respondents segregated the expenses which he attributed to workmen's compensation on the basis of salaries paid in the State of Kansas and those paid in the State of Missouri. Premiums on account of this type of insurance are all on the basis of [fol. 110] employee payroll. The yardwork payroll on account of hogs is occasioned largely in the State of Kansas, and the yardwork payroll on account of cattle and calves, and sheep is occasioned largely in the State of Missouri. The office payroll is occasioned jointly by all of the livestock handled. The auditor for the respondents attributed to all the firms represented by him $993.07, premiums on account of workmen's compensation for yard workers, to the State of Kansas; $7,048.27 to yard workers in Missouri; and $93.47 to office workers. For all practical purposes he attributed $993.07 to hogs; $7,048.27 to cattle and calves, and sheep; and $93.47 to cattle and calves, hogs and sheep. The two accountants were in practical agreement as to the amount necessary to provide for insurance premiums. The accountant for the Government set up $911.76 for all respondents for fire insurance premiums, and the accountant for the respondents who are members of the Exchange set up $841.40.

152. In considering the reasonable per head expense on account of some other functions the experience of each firm has been gone into and the normal arrived at on the basis of the experience of each individual firm. The use of an average based upon an aggregate of the expenses of the firms under consideration has been condemned and the reason therefor given. In the case of expenses in which the amounts involved are so small, the consideration of the market as a whole or the consideration of the experience

of each of the respondents would lead substantially to the same result. Because of this fact the figures for the market as a whole are used in arriving at the reasonable per head costs on account of insurance.

153. Premiums for workmen's compensation on account of cattle and calves, and sheep have been allocated to these species on the basis of the yard payroll occasioned by each. All premiums paid in the State of Kansas have been attributed to hogs. Office workmen's compensation premiums and fire insurance premiums are occasioned by all species. The sum of $93.47, office workmen's compensation premiums, and $841.40, fire insurance premiums, have been allocated to the various species on the basis of account sales and account purchases. These allocations result in attributing $7,219 to cattle and calves; $1,240 to hogs; and $517 to sheep. The per head expenditure on this basis is $.0032 for cattle and calves; $.0012 for hogs; and $.0003 for sheep.

154. This results in a per head allowance on account of the types of insurance discussed herein of $.00677 per head for cattle and calves; $.00245 per head for hogs; and $.0013 per head for sheep.

Interest on Capital

155. A legitimate cost to be covered into rates and paid by shippers of livestock is a reasonable amount for interest on the capital necessary in the conduct of the commission business. Inasmuch as a separate allowance to cover the uninsurable risks and contingencies is hereafter provided for in profit, the reasonable rate of return herein found represents interest on the use of capital.

156. Three witnesses testified in the second hearing as to what constitutes a reasonable rate of return under the conditions above stated. Two of them were bankers called by [fol. 111] the respondents and the third an economist called by the Government. One of the bankers and the economist are in substantial agreement. The economist, who testified first, gave it as his opinion that an allowance of 6 percent interest on the value of the fixed assets would be reasonable and that a rate somewhere between 6 and 8 percent on the amount of liquid working capital necessary in the business would be reasonable. One of the bankers called by

the respondents gave it as his opinion that the Secretary of Agriculture would act fairly in arriving at a rate of return if he based his conclusions upon this opinion. The other banker called by the respondents stated that, in his judgment, a reasonable rate of return would be 20 percent. The inference to be drawn from his testimony, however, is that he had in mind an interest rate high enough not only to pay for the use of the capital but also to cover the risks incident to the business. The bank of which he is an official assesses charges against various of the respondents for the temporary overdrafts they make at his bank. The rates charged vary and depend, in part, upon the average amount of the deposits carried by them. He stated that the charge made by his bank to the respondents on these overdrafts would average around 7 percent.

157. In determining the reasonable amount of capital to be considered in the case of each of the respondents, the amount as determined by the accountant for those respondents who are members of the Livestock Exchange has been considered. A segregation of capital has been made into fixed and working capital. Fixed capital has been taken to be the amount as determined by the accountant for the respondents represented by the following items, namely, furniture, fixtures and equipment; materials and supplies; Exchange memberships; and mailing lists and customer records. On the value of these, interest at 6 percent has been computed in the case of each firm. On the amount of working capital determined by the accountant for the respondents interest has been computed at 7 percent. The sum of the interest on fixed assets and interest on working capital, expressed in cents per head, has been set up as to each firm.

158. The following tables set forth by firms the per head interest on account of selling, calculated on the basis stated above:

Cattle and Calves

Firm No.	No. of Head	Interest	Firm No.	No. of Head	Interest
48	36376	$.0022	20	27615	$.0139
19	9941	.0031	53	26901	.0141
84	62243	.0051	26	28553	.0144
87	953	.0053	7	14931	.0147
59	138133	.0055	61	10042	.0147
34	26859	.0069	78	7125	.0153

Cattle and Calves

Firm No.	No. of Head	Interest	Firm No.	No. of Head	Interest
54	117345	.0069	15	12797	.0155
55	47630	.0070	74	6732	.0162
83	45799	.0071	9	2191	.0163
82	90682	.0076	29	24297	.0174
51	22013	.0078	6	10253	.0178
46	99113	.0084	16	23073	.0184
63	89771	.0092	62	28109	.0187
13	55362	.0093	77	21031	.0187
65	35698	.0097	35	55998	.0189
[fol. 112]					
56	29689	.0100	4	33160	.0193
42	59341	.0101	17	9707	.0215
70	32595	.0102	52	18614	.0231
18	46755	.0109	76	6872	.0265
69	9475	.0115	66	1503	.0324
75	20363	.0116	60	14265	.0374
25	42045	.0118	88	2273	.0463
71	53940	.0122	72	1934	.0494
14	35159	.0125	11	1708	.0529
23	26219	.0125	67	382	.0594
73	73218	.0125	37	2122	.0624
12	59216	.0130	33	1218	.0737
30	22770	.0134			

Hogs

Firm No.	No. of Head	Interest	Firm No.	No. of Head	Interest
61	8801	$.0007	6	7962	$.0051
19	3068	.0009	16	8425	.0051
59	64996	.0016	23	1536	.0055
51	156853	.0017	4	9171	.0055
55	20575	.0020	62	15594	.0056
54	23261	.0021	15	20406	.0059
46	32905	.0025	17	6258	.0063
56	7899	.0027	35	11775	.0067
63	116670	.0027	52	6193	.0071
70	13427	.0028	76	7986	.0078
34	11223	.0028	87	226	.0078
13	40786	.0028	82	29780	.0081
18	11358	.0029	84	9880	.0860
42	11015	.0031	73	18720	.0086
65	7610	.0032	66	737	.0103
71	20141	.0036	60	19875	.0107
48	5893	.0036	78	3260	.0111
25	18661	.0036	79	2969	.0126
20	3727	.0039	77	9507	.0129
14	27771	.0039	72	1045	.0134
12	27121	.0039	11	2990	.0259
53	18759	.0041	75	4922	.0174
7	37426	.0043	67	5931	.0177
26	20075	.0044	74	2364	.0185
9	17642	.0048	33	1690	.0215
29	12428	.0048	83	3292	.0634
30	3489	.0048	88	422	.0942

[fol. 113] Sheep

Firm No.	No. of Head	Interest	Firm No.	No. of Head	Interest
19	741	$.0003	12	2450	$.0028
51	6196	.0007	7	1295	.0031
59	191587	.00076	73	3770	.0031
44	248022	.00084	16	359	.0033
54	565861	.00096	77	1532	.0034
55	2947	.0012	17	439	.0037
13	5687	.00137	4	1583	.0038
56	4924	.0014	76	1356	.0038
63	24716	.00144	84	103847	.0039
5	205880	.00145	66	283	.0044
61	638	.0016	78	3432	.0046
70	2484	.0016	1	42372	.00492
46	7002	.0017	33	805	.00493
87	93327	.00175	20	511	.0052
15	3805	.0018	82	1927	.0052
65	1284	.0018	75	2487	.0062
18	2732	.0020	79	2237	.0062
25	3067	.00212	53	534	.0063
62	3063	.0022	29	734	.0068
26	2544	.00229	11	175	.0084
9	598	.0023	37	321	.0084
67	500	.0023	14	5916	.00867
35	40948	.00245	33	805	.0094
6	1220	.0026	83	1545	.0235
52	4081	.0026			

It is found that the following are reasonable allowances per head on account of interest:

$.015 per head as to cattle and calves.
.007 per head as to hogs.
.004 per head as to sheep.

Profits

159. In addition to producing reasonable per head costs incident to the handling of the different species of livestock, reasonable rates should provide also a per head profit, that is, compensation for management and the carrying of uninsurable risk. The two cooperative market agencies and some of the other respondents are managed by employees. The remuneration received by employee-managers gives some indication as to what efficient management costs. In 1929 two of the respondent firms had employee-managers who did no selling. The cost of management was 92 cents per car in the case of one, and 99 cents in the case of the other. In 1931 the same two firms were paying a dollar per car and 80 cents per car. A per head allowance on the basis of one dollar a car as to each species has been made on account of management.

[fol. 114] 160. The risks assumed by respondents may be said to fall roughly into three general classes. First, those

against which insurance actually is carried by at least some of the respondents. Second, those of such a nature that insurance against them is conceivable, though not actually obtainable. Third, those involving a decline in, or cessation of respondents' businesses. The first class has been covered by an allowance in the reasonable cost under the item "insurance."

161. The second class comprises whatever liability respondents assume when they sell livestock, the title to which is defective; errors entering into accounting processes; failure of purchasers to make payments; litigation arising on account of bank failures; freight undercharges; and sales of diseased or defective livestock. The experience of the respondents as reflected in the audits of their books and accounts for the years 1929 to 1931 indicate that the losses suffered on account of the risks of this class amount to only a few cents per car. A per head allowance on the basis of 10 cents per car as to each species has been made on account of this class of uninsurable risk.

162. The third class consists of the danger that, through economic changes or failure of those in charge of the businesses properly to conduct them, the volume of business enjoyed may decline even to the point where it becomes impracticable to continue the conduct of the business. It seems quite clear that nothing should be included in the rates to cover risks or losses due to bad management. It may be that the same is true of risks and losses arising from economic changes. But whoever should bear these risks there is no practicable way of appraising them. The rates hereinafter prescribed represent something more than the reasonable cost plus reasonable profit. That something consists of a substantial spread between the total of the reasonable costs and profits as found and the rates as prescribed, and is more than the amount reasonably to be allowed to cover such errors and omissions as may have crept into the rate making process.

Summary of Reasonable Selling Costs Plus Reasonable Profits

163. A summary of the foregoing findings as to reasonable per head costs and reasonable profits for selling each

species of livestock arriving at the Kansas City market is as follows:

	Cattle and Calves	Hogs	Sheep
Salesmanship	$.1379	$.0353	$.0140
Yarding Salaries	.0750	.0300	.0080
Yarding Expenses	.0140	.0060	.0004
Office Salaries	.0525	.0300	.0100
Office Expenses	.0300	.0175	.0050
Business Getting and Maintaining	.0450	.0180	.0059
Administrative and General Expenses	.0330	.0200	.0050
Insurance	.0070	.0025	.0013
Interest	.0150	.0070	.0040
Total Cost	.4094	.1663	.0536
Profit			
To cover management	.0350	.0133	.0040
To cover uninsurable risks	.0035	.0014	.0004
Total reasonable cost and reasonable profit	$.4479	$.1810	$.0580

[fol. 115] 164. The audits covering the respective years 1929 and 1931 show, as a rule, only slight differences in the expenses of the respondent firms who operated in both of those years. There occurred, too late to be reflected in the audits for 1931, increases in certain of respondents' lesser expenses, such as postage and taxation, but through salary and wage cuts, also made too late to be reflected in the audits, there occurred considerable decreases in one of the major expenses of the business. It follows, therefore, that the above stated costs cover the situation as it existed before the depression brought about reductions in expenses.

Buying Costs

165. Most of the respondent commission firms and all of the respondent order buyers are engaged in the buying of livestock on a commission basis. The commission men consider their buying activities as supplementary to their selling activities. Some of the salesmen also buy. In some firms there are those employed as buyers only. For the most part the same personnel employed in one activity is also engaged in the other. This is particularly true with respect to the office and yard forces. Most of the items of costs incident to the business of the commission firms are incurred jointly in selling and buying. Their unit costs for buying are the same in amount as those shown above

for selling, except as to the items for salesmanship and for interest.

166. The record indicates that in the normal course of business a competent buyer can buy as many animals of a species as an equally competent salesman can sell. This fact, coupled with buying salaries paid, indicates that the cost to the respondent commission men for buying a unit of livestock is somewhat less than the cost of selling a like unit. Somewhat more capital is needed in the buying of livestock than in the selling of it. The interest cost is, therefore, somewhat greater.

167. An analysis of the costs incurred by those respondents engaged solely in the order buying business leads to the conclusion that their unit costs for buying do not vary greatly from those incurred by the commission men in their buying activities.

168. On the basis of all the facts of record and the inferences to be drawn from the record, it is found that the rates charged for buying livestock on the Kansas City market should not exceed those for selling livestock.

XXI. Rate Structure

169. Livestock does not arrive at market in standard units. It may arrive in lots of from one to many head. On the one hand such consignments may be of the same grade and may sell at one price, and require only one draft; on the other hand it may consist of many classes sold to various buyers and require numerous weight drafts. Obviously, the work occasioned in handling livestock under such circumstances will vary greatly and the cost of performing the service on different consignments will vary also. A tariff of rates and charges constructed to meet each variation and to assess precisely the cost occasioned [fol. 116] by handling each consignment against that particular consignment, would be unduly complex. A schedule of rates which attempted to do exact justice by every consignment would be so complex as to be difficult of interpretation and impracticable of application. A tariff simple enough to be practicable and easy of application will work some inequities in some individual cases. A reasonable schedule of rates should do as nearly exact justice

as is practicable. Therefore, the rate maker's problem is to find a structure which, when applied to the particular businesses under consideration, will avoid as far as possible unwieldy complexity on the one hand and on the other a simplicity which brings about too many arbitrary distinctions and too much inequity. From time to time attempts have been made to smooth out all arbitrary distinctions. The result has been not only a complexity undesirable in itself but also the creation by such complexity of new inequities. It is recognized, therefore, that any tariff structure which may be adopted can be applied to circumstances which, though not unique, are unusual, and thereby shown to work inequities. Bearing this in mind, balancing advantage against disadvantage, it is believed that a tariff structure only sufficiently complex to avoid serious inequities with respect to normal transactions is to be preferred.

170. Except as to Tariff No. 3, hereinafter discussed, market agency rate schedules at Kansas City have in the past been based quite generally upon the carlot of livestock as the unit of charge. The reason for this has been that the carlot has been the unit of handling. Until comparatively recently practically all the livestock handled by market agencies at the Kansas City stockyard arrived there in railroad cars. The sales pens in the stockyard were constructed to hold one carlot comfortably and conveniently. It was the custom of buyers to buy by the carlot. In probably the majority of instances the single carlot was synonymous with the single consignment. With the growth of the practice of bringing livestock to market by motor truck and the increasing custom of buyers to purchase animals in less than carlots, as hereinbefore described, these conditions changed.

171. The filing by the great majority of the respondents of their Tariff No. 3 raises in this proceeding an issue not heretofore present in commission rate determinations made by the Secretary of Agriculture, namely, whether the rates prescribed by this order should be set up in the structure heretofore customary, or according to that desired by the respondents last above referred to, or in some modification of one or the other of those structures.

172. The record here shows that the consignment is the unit of handling. The consignment is, therefore, the unit

of cost. Many items of cost attach to the consignment in substantially the same amount, regardless of whether it contains many or few animals. The identity of a consignment must be preserved throughout its entire handling in the stockyard; it must be separately accounted for by the office force. Some items of cost tend to increase as the number of animals in a consignment becomes greater, but probably none increase in direct proportion.

173. Certain modes of arrival of animals at the stockyard affect the number of animals contained in the respective consignments. On the whole, a thousand head of ani- [fol. 117] mals arriving by truck will represent more separate consignments than a similar number arriving by rail. This fact has caused it to be said that the so-called "truck-ins" are more expensive to handle than the rail arrivals, but analysis of the costs shown in the record, as well as the opinions of competent witnesses therein contained, compel the conclusion that it is not the mode of arrival but the average size of the consignment which fixes the per head cost of handling the animals. To base differentials in rates upon the modes of arrival is therefore to attack the problem indirectly rather than directly and produces different charges for handling the same species, number, weight, kind, grade, and quality of animals in two separate consignments merely because one happened to come to the market in a vehicle propelled by gasoline and the other is one drawn by steam.

174. The various commission rate tariffs in force from time to time at the Kansas City stockyard since the effective date of the Packers and Stockyards Act, 1921, are in the record. At least since that date the tariffs have always contained some rates stated on a head basis, and they have also recognized at least one rate distinction based on differences in weights. Reference is here made to the common provision that bovine animals weighing on the average 400 lbs. or less, and called "calves", are handled at rates considerably lower than those weighing more than 400 lbs., and called "cattle." That this is purely a weight distinction becomes apparent when it is borne in mind that it is the average per head weight of the entire draft which controls and that thereby a 1500 lb. bull may become a calf

by being weighed together with a sufficient number of bovines weighing from 200 to 300 pounds each.

175. In the filing of Tariff No. 3 respondents sought to readjust the structure of their schedules to the changed character of their business. In the formulation of this new tariff they tested certain suggested schedules by practical applications of them to the transactions they actually were handling. By a process of trial and error they arrived at a tariff which, though not going so far as some of them advocated, nevertheless constituted a step in the direction of a structure better fitted to the business of today than was the structure which it replaced.

176. At the last hearing in this proceeding this tariff structure was subjected to close scrutiny and analysis. The evidence compels the conclusion that while some inequities would result from an application of the principles upon which it was based, nevertheless on the whole such inequities are both fewer and less severe than those which would result from the application of the principles which had been discarded. Certain characteristics of this Tariff No. 3 appear to do violence to the basic principles upon which it rests. There is, for instance, no difference in the rates for calves or cattle coming in by truck, as compared with those arriving by rail, but 5 cents more per head is charged for truck-in yearlings than for those coming in railroad cars, and quite generally the rates on truck-in sheep are higher than for those coming by rail. Also, a lower rate is made for so-called "yard sales" or "seconds," than for freshly arriving livestock.

177. The tariff structure adopted in this order eliminates these and other inconsistencies but otherwise follows in structure the aforesaid Tariff No. 3. It contains for the [fol. 118] bovine species a weight class known as "yearlings", and a weight distinction as between light swine or pigs and heavy swine or hogs. In recognition of the fact that, as heretofore stated, the cost of handling a consignment does not increase directly in proportion to the increased number of head in the consignment, the tariff structure here adopted uses a consignment charge graduated according to the number of head in the consignment.

178. That which has been said with respect to the structure of the schedule for selling applies also to the structure for buying.

XXII. The Reasonableness of Existing Rates

179. Upon the basis of the reasonable costs hereinbefore determined and upon a consideration of the entire record, it is found that respondents' schedules of rates and charges now under investigation contain rates and charges which are unreasonable and unjustly discriminatory.

XXIII. Reasonable Rates

180. Upon the basis of all the foregoing and the entire record, it is found that rates not in excess of the following are schedules of just and reasonable rates:

Article I

Definitions

Calves are animals of the bovine species, weighed in drafts, the average weight of the animals in which is 400 pounds or under.

Yearlings are animals of the bovine species, weighed in drafts, the average weight of the animals in which is from 401 pounds to 800 pounds.

Cattle are animals of the bovine species, weighed in drafts, the average weight of the animals in which is 801 pounds or over.

Pigs are swine, weighed in drafts, the average weight of the animals in which is 130 pounds or under.

Hogs are swine, weighed in drafts, the average weight of the animals in which is 131 pounds or over.

A draft is all those animals in one consignment weighed as a single sales or purchase classification.

A consignment for the purpose of assessing selling charges, is all the livestock of one species delivered in the name of one person to one market agency to be offered for sale during the trading hours of one day, provided, however, that when the livestock of several owners arrives in one car, and in not more than one car, each species in that carlot shall be considered as one consignment.

[fol. 119] A consignment, for the purpose of assessing buying charges, is all the livestock of one species bought at any time but shipped or delivered to one person on one market day.

A person is an individual, a partnership, a corporation, and/or an association of any such acting as a unit.

Article II

Selling Charges

Section A, Calves, Yearlings, and Cattle

Calves:

Consignments of one head	40¢ per head
Consignments of more than one head	
1 to 20 head inclusive	25¢ per head
Each head over 20	15¢ per head

Yearlings:

Consignments of one head	80¢ per head
Consignments of more than one head	
1 to 20 head inclusive	45¢ per head
Each head over 20	25¢ per head

Cattle:

Consignments of one head	80¢ per head
Consignments of more than one head	
1 to 20 head inclusive	70¢ per head
Each head over 20	50¢ per head

Section B, Swine

Pigs:

Consignments of one head	35¢ per head
Consignments of more than one head	
1 to 40 head inclusive	20¢ per head
Each head over 40	5¢ per head

Hogs:

Consignments of one head	35¢ per head
Consignments of more than one head	
1 to 40 head inclusive	25¢ per head
Each head over 40	5¢ per head

[fol. 120] Section C, Sheep or Goats

Sheep or Goats:

Consignments of one head	35¢ per head
Consignments of more than one head	
For the first 10 head in each 300 head	25¢ per head
" " next 50 " " " " "	15¢ per head
" " next 60 " " " " "	5¢ per head
" " next 130 " " " " "	2¢ per head
" " next 50 " " " " "	1¢ per head

Article III

Extra Service Charges

The following extra service charges are applicable to all species:

For each additional weight draft over 3, on account of sales classification	15¢
For each additional check, each additional account of sales, each proceeds deposit or bank credit, over 1	5¢

Article IV

Buying Charges

The rates for buying livestock of the various species shall not be in excess of those for selling like species.

Order

It is ordered that the respondent market agencies, and each and every one of them, on and after 30 days from the date hereof, cease and desist from demanding or collecting for any stockyard service the rate or charge shown therefor in the schedule of rates and charges now on file with the Secretary of Agriculture.

It is further ordered that on and after 30 days from the date hereof neither the respondent market agencies nor any of them shall publish, demand or collect any rate or charge for the furnishing of any stockyard service in ex-

cess of the rate or charge hereinbefore determined to be just, reasonable and non-discriminatory for the furnishing of such service.

It is further ordered that at least ten days prior to the date upon which this order becomes effective each and every of the respondent market agencies publish, give notice of, and file with the Secretary of Agriculture, in accordance with the Packers and Stockyards Act, 1921, and the regulations of the Secretary of Agriculture thereunder, a schedule showing all rates and charges for the stockyard services furnished by such respondent at the Kansas City Stock- [fols. 121-147] yards, Kansas City, Missouri, and all rules and regulations changing, affecting or determining such rates or charges, and that no rate or charge so shown for any such stockyard service be in excess of the rate or charge hereinbefore determined to be just, reasonable and non-discriminatory for such service.

It is further ordered that a copy of this order be transmitted by registered mail to each and every one of the respondent market agencies.

In witness whereof the Secretary of Agriculture has signed this order and caused the official seal of the Department of Agriculture to be affixed hereto in the City of Washington this 14th day of June, 1933.

Henry A. Wallace, Secretary of Agriculture.

(Here follow tables, side folios 148 & 149)

[fol. 148]

EXHIBIT "C" TO PETITION

Comparison of So-Called "Reasonable" Unit-Costs per Order of June 14, 1933, and Total Costs as Found by Government Accountants and as Claimed by Respondents (59 Firms) for the Test Year 1931

	Selling & Buying No. of Head 59 Firms	Allowances per Order June 1933		Total Costs as Claimed		Order's Allowances in Recess (Excesses Shown *)		Differences betw Govt & Resp's Costs (Govt Recess*)
		Rate per Head	Amount	By Government Bachmann Exhibits	Respondents	Of Govt. Costs	Of Resp Costs	
Cattle & Calves								
Salesmanship & Buying	2,284,207	$0.1379	$314,992.15	$351,248.83	$410,161.43	$ 36,256.68	$ 95,169.28	$ 58,912.60
Yarding Salaries	.....	0.0750	171,315.53	221,737.54	236,083.76	50,422.01	64,768.23	14,346.22
Yarding Expenses	.....	.0140	31,978.90	29,269.39	29,349.00	* 2,709.51	* 2,629.90	79.61
Office Salaries	.....	.0525	119,920.87	136,767.01	126,232.46	16,846.14	6,311.59	* 10,534.55
Office Expenses	.....	.0300	68,526.61	71,533.10	74,004.24	3,006.49	5,478.03	2,471.54
Business Getting & Mtce	.....	.0450	102,789.32	326,303.91	296,248.94	223,514.59	193,459.62	* 30,054.97
Adm & Genl Expenses	.....	.0330	75,378.83	75,366.43	81,373.82	* 12.40	5,994.99	6,007.39
Insurance (Risk Expense)	.....	.0070	15,989.45	30,433.98	24,010.06	14,444.53	8,020.61	* 6,423.92
Return on Investment	.....	.0150	34,263.11	26,730.01	44,452.54	* 7,533.10	10,189.43	17,722.53
Total "Costs"	.....	.4094	$935,154.77	$1,269,390.20	$1,321,916.25	$ 334,235.43	$ 386,761.88	$52,526.05
Profit—Management	.....	.0350	79,947.25	54,082.62	86,160.47	* 25,864.63	6,213.22	32,077.85
Uninsurable Risks	.....	.0035	7,994.72	.....	.....	* 7,994.72	* 7,994.72	.....
Total Cost+Profit	.....	.4479	$1,023,096.74	$1,323,472.82	$1,408,076.72	$300,376.08	$384,980.38	$84,603.90
Hogs								
Salesmanship & Buying	1,045,048	$0.0353	$36,890.19	$56,621.73	$63,547.69	$ 19,731.54	$ 26,657.50	$ 6,925.96
Yarding Salaries	.....	.0300	31,351.44	62,975.60	65,297.42	31,624.16	33,945.98	2,321.82
Yarding Expenses	.....	.0060	6,270.29	2,274.92	2,247.49	* 3,995.37	* 4,022.80	* 27.43
Office Salaries	.....	.0300	31,351.44	36,958.26	41,332.72	5,606.82	9,981.28	4,374.46
Office Expenses	.....	.0175	18,288.34	19,426.59	26,110.38	1,138.25	7,822.04	6,683.79
Business Getting & Mtce	.....	.0180	18,810.86	52,043.54	101,008.13	33,232.68	82,197.27	48,964.59
Adm & Genl Expenses	.....	.0200	20,900.96	18,800.21	19,240.86	* 2,100.75	* 1,660.10	440.65
Insurance (Risk Expense)	.....	.0025	2,612.62	5,508.06	4,971.47	2,895.44	2,358.85	* 536.59
Return on Investment	.....	.0070	7,315.34	5,707.31	10,444.59	* 1,608.03	3,129.25	4,737.28
Total "Costs"	.....	.1665	$173,791.48	$260,316.22	$334,200.75	$ 86,524.74	$ 160,409.27	$73,884.53
Profit—Management	.....	.0133	13,899.14	9,121.51	19,777.10	* 4,777.63	5,877.96	10,655.59
Uninsurable Risks	.....	.0014	1,463.07	.....	.....	* 1,463.07	* 1,463.07	.....
Total Costs+Profit	.....	.1810	$189,153.69	$269,437.73	$353,977.85	$80,284.04	$164,824.16	$84,540.12
Sheep								
Salesmanship & Buying	1,896,608	$0.0140	$26,552.51	$26,199.42	$33,323.47	$ * 353.09	$ 6,770.96	$ 7,124.05
Yarding Salaries	.....	.0080	15,172.86	14,765.66	15,471.40	* 407.20	298.54	705.74
Yarding Expenses	.....	.0004	758.64	8,726.11	8,673.93	7,967.47	7,915.29	* 52.18
Office Salaries	.....	.0100	18,966.08	16,601.47	19,715.03	* 2,364.61	748.95	3,113.56
Office Expenses	.....	.0050	9,483.04	8,850.50	9,856.62	* 632.54	373.58	1,006.12
Business Getting & Mtce	.....	.0059	11,189.99	49,522.74	53,885.19	38,332.75	42,695.20	4,362.45
Adm & Genl Expenses	.....	.0050	9,483.04	9,125.72	8,512.70	* 357.32	* 970.34	* 613.02
Insurance (Risk Expense)	.....	.0013	2,465.59	5,044.25	3,331.73	2,578.66	866.14	* 1,712.52
Return on Investment	.....	.0040	7,586.43	5,918.27	4,822.08	* 1,668.16	* 2,764.35	* 1,096.19
Total "Costs"	.....	.0536	$101,658.18	$144,754.14	$157,592.15	$ 43,095.96	$ 55,933.97	$12,838.01
Profit—Management	.....	.0040	7,586.43	6,660.94	9,928.78	* 925.49	2,342.35	3,267.84
Uninsurable Risks	.....	.0004	758.64	.....	.....	* 758.64	* 758.64	.....
Total Costs+Profit	.....	.0580	$110,003.25	$151,415.08	$167,520.93	$41,411.83	$57,517.68	$16,105.85
All Species								
Salesmanship & Buying	.....	.....	$378,434.85	$434,069.98	$507,032.59	$ 55,635.13	$128,597.74	$ 72,962.61
Yarding Salaries	.....	.....	217,839.83	299,478.80	316,852.58	81,638.97	99,012.75	17,373.78
Yarding Expenses	.....	.....	39,007.83	40,270.42	40,270.42	1,262.59	1,262.59	.....
Office Salaries	.....	.....	170,238.39	190,326.74	187,280.21	20,088.35	17,041.82	* 3,046.53
Office Expenses	.....	.....	96,297.99	99,810.19	109,971.24	3,512.20	13,673.25	10,161.05
Business Getting & Mtce	.....	.....	132,790.17	427,870.19	451,142.26	295,080.02	318,352.09	23,272.07
Adm & Genl Expenses	.....	.....	105,762.88	103,292.38	109,127.38	* 2,470.47	3,364.55	5,835.02

	Selling & Buying No. of Head 59 Firms	Allowances per Order June 1933		By Government Bachmann Exhibits	Respondents	Order's Allowances in Excess (Excesses Shown *)		Differences betw Govt & Resp's Costs (Govt Recess*)
		Rate per Head	Amount			Of Govt. Costs	Of Resp Costs	
Cattle & Calves								
Salesmanship & Buying	2,284,207	$0.1379	$314,992.15	$351,248.83	$410,161.43	$ 36,256.68	$ 95,169.28	$ 58,912.60
Yarding Salaries		0.0750	171,315.53	221,737.54	236,083.76	50,422.01	64,768.23	14,346.22
Yarding Expenses		.0140	31,978.90	29,269.39	29,349.00	* 2,709.51	* 2,629.90	79.61
Office Salaries		.0525	119,920.87	136,767.01	126,232.46	16,846.14	6,311.59	* 10,534.55
Office Expenses		.0300	68,526.61	71,533.10	74,004.24	3,006.49	5,478.03	2,471.54
Business Getting & Mtce		.0450	102,789.32	326,303.91	296,248.94	223,514.59	193,459.62	* 30,054.97
Adm & Genl Expenses		.0330	75,378.83	75,366.43	81,373.82	12.40	5,994.99	6,007.39
Insurance (Risk Expense)		.0070	15,989.45	30,433.98	24,010.06	14,444.53	8,020.61	* 6,423.92
Return on Investment		.0150	34,263.11	26,730.01	44,452.54	* 7,533.10	10,189.43	17,722.53
Total "Costs"		.4094	$935,154.77	$1,269,390.20	$1,321,916.25	$ 334,235.43	$ 386,761.88	$52,526.05
Profit—Management		.0350	79,947.25	54,082.62	86,160.47	* 25,864.63	6,213.22	32,077.85
Uninsurable Risks		.0035	7,994.72	.....	.....	* 7,994.72	* 7,994.72	.....
Total Cost+Profit		.4479	$1,023,096.74	$1,323,472.82	$1,408,076.72	$300,376.08	$384,980.38	$84,603.90
Hogs								
Salesmanship & Buying	1,045,048	$0.0353	$36,890.19	$56,621.73	$63,547.69	$ 19,731.54	$ 26,657.50	$ 6,925.96
Yarding Salaries		.0300	31,351.44	62,975.60	65,297.42	31,624.16	33,945.98	2,321.82
Yarding Expenses		.0060	6,270.29	2,274.92	2,247.49	* 3,995.37	* 4,022.80	* 27.43
Office Salaries		.0300	31,351.44	36,958.26	41,332.72	5,606.82	9,981.28	4,374.46
Office Expenses		.0175	18,288.34	19,426.59	26,110.38	1,138.25	7,822.04	6,683.79
Business Getting & Mtce		.0180	18,810.86	52,043.54	101,008.13	33,232.68	82,197.27	48,964.59
Adm & Genl Expenses		.0200	20,900.96	18,800.21	19,240.86	* 2,100.75	* 1,660.10	* 440.65
Insurance (Risk Expense)		.0025	2,612.62	5,508.06	4,971.47	2,895.44	2,358.85	* 536.59
Return on Investment		.0070	7,315.34	5,707.31	10,444.59	* 1,608.03	3,129.25	4,737.28
Total "Costs"		.1665	$173,791.48	$260,316.22	$334,200.75	$ 86,524.74	$ 160,409.27	$73,884.53
Profit—Management		.0133	13,899.14	9,121.51	19,777.10	* 4,777.63	5,877.96	10,655.59
Uninsurable Risks		.0014	1,463.07	.....	.....	* 1,463.07	* 1,463.07	.....
Total Costs+Profit		.1810	$189,153.69	$269,437.73	$353,977.85	$80,284.04	$164,824.16	$84,540.12
Sheep								
Salesmanship & Buying	1,896,608	$0.0140	$26,552.51	$26,199.42	$33,323.47	$ * 353.09	$ 6,770.96	$ 7,124.05
Yarding Salaries		.0080	15,172.86	14,765.66	15,471.40	* 407.20	298.54	705.74
Yarding Expenses		.0004	758.64	8,726.11	8,673.93	7,967.47	7,915.29	* 52.18
Office Salaries		.0100	18,966.08	16,601.47	19,715.03	* 2,364.61	748.95	3,113.56
Office Expenses		.0050	9,483.04	8,850.50	9,856.62	* 632.54	373.58	1,006.12
Business Getting & Mtce		.0059	11,189.99	49,522.74	53,885.19	38,332.75	42,695.20	4,362.45
Adm & Genl Expenses		.0050	9,483.04	9,125.72	8,512.70	* 357.32	* 970.34	* 613.02
Insurance (Risk Expense)		.0013	2,465.59	5,044.25	3,331.73	2,578.66	866.14	* 1,712.52
Return on Investment		.0040	7,586.43	5,918.27	4,822.08	* 1,668.16	* 2,764.35	* 1,096.19
Total "Costs"		.0536	$101,658.18	$144,754.14	$157,592.15	$ 43,095.96	$ 55,933.97	$12,838.01
Profit—Management		.0040	7,586.43	6,660.94	9,928.78	* 925.49	2,342.35	3,267.84
Uninsurable Risks		.0004	758.64	.....	.....	* 758.64	* 758.64	.....
Total Costs+Profit		.0580	$110,003.25	$151,415.08	$167,520.93	$41,411.83	$57,517.68	$16,105.85
All Species								
Salesmanship & Buying			$378,434.85	$434,069.98	$507,032.59	$ 55,635.13	$128,597.74	$ 72,962.61
Yarding Salaries			217,839.83	299,478.80	316,852.58	81,638.97	99,012.75	17,373.78
Yarding Expenses			39,007.83	40,270.42	40,270.42	1,262.59	1,262.59	.....
Office Salaries			170,238.39	190,326.74	187,280.21	20,088.35	17,041.82	* 3,046.53
Office Expenses			96,297.99	99,810.19	109,971.24	3,512.20	13,673.25	10,161.05
Business Getting & Mtce			132,790.17	427,870.19	451,142.26	295,080.02	318,352.09	23,272.07
Adm & Genl Expenses			105,762.83	103,292.36	109,127.38	* 2,470.47	3,364.55	5,835.02
Insurance (Risk Expense)			21,067.66	40,986.29	32,313.26	19,918.63	11,245.60	* 8,673.03
Return on Investment			49,164.88	38,355.59	59,719.21	* 10,809.29	10,554.33	21,363.62
Total "Costs"			$1,210,604.43	$1,674,460.56	$1,813,709.15	$ 463,856.13	$ 603,104.72	$139,248.59
Profit—Management			101,432.82	69,865.07	115,866.35	* 31,567.75	14,433.53	46,001.28
Uninsurable Risks			10,216.43	.....	.....	* 10,216.43	* 10,216.43	.....
Total Costs+Profit			$1,322,253.68	$1,744,325.63	$1,929,575.50	$422,071.95	$607,321.82	$185,249.87

[fol. 149]

In United States District Court

STATEMENT AS TO PETITIONS FILED IN CASES NO. 2329 TO 2378, INC.

The petitions filed in the several remaining cases being Docket Nos. In Equity Nos. 2329–2378, Inc., are identical with the petition above set out and filed in Case No. 2328, except in respect to the name of the individual plaintiff (or plaintiffs) and the amounts in dollars or percentages appearing in Section VIII of each of the petitions applicable under the allegations to the particular plaintiff in the specific suit. The name or names of the plaintiff (or plaintiffs), the number of the suit, and the specific amounts set forth in the order of their appearance in Section VIII of each petition are for the purpose of brevity condensed and set forth in the following table:

Docket No.	Name of Plaintiff	Amount Appearing in First Paragraph of Sub-Section (a) of Section VIII	Amounts Appearing Seriatim in Second Paragraph of Sub-Section (a) of Section VIII					Amounts Appearing Seriatim in Second Paragraph of Sub-Section (b) of Section VIII	
		(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
2329	J. M. Ragland, W. B. Storts and W. L. Burrus, partners d/b as Ragland, Storts & Burrus L. S. Com. Co.	$12,587.72	8%	13%	15.50%	6.53%	13.59%	$.....	$6,500.00
2330	H. H. Klecker, d/b as Hinie Klecker Sheep Com. Co.	5,058.70	19%	76%	.....%	.....%	13.91%	$356.79	$6,000.00
2331	R. H. Lewis and S. H. Flournoy, Partners d/b as Lewis-Flournoy Livestock Com. Co.	6,824.37	17%	11%	12.98%	2.56%	12.04%	1492.97	7,000.00
2332	Grover C. Maxwell and Ben J. Furnish, Partners d/b as Maxwell-Furnish Livestock Com. Co.	4,628.73	..%	..%	11.30%*	.32%	6.14%	1900.84	8,000.00
2333	John M. Nichols, d/b as John M. Nichols L. S. Com. Co.	6,119.05	..%	..%	11.75%	1.82%	5.96%	None	4,000.00
2334	Bowles Livestock Com. Co., a Corporation	16,820.69	11%	18%	17.78%	1.95%	8.81%	None	.....
2335	Crider Brothers Com. Co., a Corporation	14,340.07	.6%	14%	14.02%	2.46%	9.42%	28.37	12,400.00
2336	Chas. Dixon Commission Co., a Corporation	14,311.67	2%*	26%	19.05%	.54%	7.38%	None	10,800.00
2337	E. W. Elliott & R. K. Swain, Partners d/b as Elliott Swain & Company	4,443.84	16%	1%	13.48%	.70%	8.68%	2032.93	7,200.00
2338	Farrar, Davis & Campbell Livestock Com. Co., a Corpn.	7,316.99	22%	8%	14.52%	.16%	6.39%	1507.90	10,900.00
2339	W. G. Gladish, d/b as Gladish Livestock Co. Co.	4,904.47	13%	9%	12.57%*	.99%	11.02%	1579.80	7,000.00
2340	O. C. Haggart, John H. Wilson, and Glenn Haggart, Partners d/b as Haggart-Wilson L. S. Com. Co.	11,339.08	3%	8%	13.19%	5.89%	5.48%	2241.16	15,150.00
2341	Wm. M. Liggett, d/b as K. C. Livestock Com. Co.	10,403.29	6%	10%	15.09%	3.98%	6.97%	None	6,000.00
2342	Fern O. Sanders, d/b as Fern O. Sanders L. S. Com. Co.	9,494.05	7%*	53%	11.16%	1.15%	9.25%	506.01	6,000.00
2343	Stuart-Robinson-Hoover Company, a Corpn.	26,583.86	16%	24%	14.99%	2.29%	12.91%	4308.63	22,200.00
2344	R. W. Wester & Joseph P. Smith, Partners, d/b as Wester Brothers & Smith Commission Company	7,408.63	20%*	9%	14.97%	.54%	8.67%	135.90	8,100.00
2345	Stagner, Pieronnet & Willis L. S. Com. Co., a Corpn.	9,535.85	1%	6%	13.47%	1.16%	9.49%	27.59	10,400.00
2346	Geo. S. Tamblyn, d/b as Tamblyn Com. Co.	5,950.72	..%	..%	14.49%	.55%	6.69%	1240.58	8,500.00
2347	Henry F. Carnes, d/b as H. F. Carnes L. S. Com. Co.	1,570.66	24%	19%*	15.89%	2.96%	2.34%	403.88	1,500.00
2348	Warren Cummings, d/b as Warren Cummings L. S. Com. Co.	12,082.91	6%	16%	11.71%	5.94%	8.44%	1564.32	6,000.00
2349	Drumm-Standish Com. Co., a Corpn.	27,682.12	52%*	28%	15.04%	1.22%	10.56%	None	29,500.00
2350	Link Fasken, d/b as Link Fasken L. S. Com. Co	480.03	..%	..%	11.66%	.....%	5.26%	402.50	750.00
2351	H. E. Long, Robt. B. Perry, and B. W. Perry, Partners d/b as Long-Perry Livestock Com. Co.	11,043.17	6%	14%	18.07%	2.23%	7.59%	2102.73	14,000.00
2352	L. E. Tice, d/b as Knight & Tice Sheep Com. Co.	3,947.78	14%	31%	.....%	.....%	11.06%	2860.39	5,000.00
2353	Chas. F. Vieregg & Robt. H. Stover, Partners, d/b as W. M. Leitch Sheep Com. Co.	2,162.76	13%	11%	.....%	.....%	10.48%	4247.65	10,000.00
2354	National Livestock Com. Co., a Corpn.	51,951.86	18%	17%	13.36%	3.39%	10.96%	1124.18	36,000.00
2355	Bryant Poole, D. L. Dempsey & James Rutherford, Partners doing business as Poole-Dempsey-Rutherford L. S. Com. Co.	8,623.74	6%	22%	13.62%	3.93%	6.38%	2065.10	12,500.00
2356	Harry Kennaley, d/b as Harry Kennaley Com. Co	5,044.28	2%*	23%	11.38%	.95%	8.64%	.....	10,000.00
2357	Ehrke-Martin L. S. Com. Co., a Corporation	7,580.08	5%*	23%	10.92%	3.97%	6.19%	1082.04	8,200.00
2358	John Clay, F. H. Connor, Alan F. Wilson & Chas. G. Smith, Partners d/b as John Clay & Company	53,222.32	18%	8%	16.36%	4.31%	13.33%	None	10,000.00
2359	Ralph W. Wright & Wm. N. Baucus, Partners, d/b as Wright & Baucus Livestock Com. Co.	23,480.77	5%	14%	12.93%	4.42%	2.20%	2222.53	13,500.00
2360	Swift & Henry Livestock Com. Co., a Corpn.	51,577.18	14%	14%	13.93%	2.91%	12.98%	None	41,800.00
2361	L. Knop, Henry F. Theis, F. W. Theis, and A. C. Theis, Partners d/b as H. Theis & Sons	14,024.77	8%	17%	13.96%	.06%	10.48%	624.19	16,500.00
2362	Ham Knighton, d/b as Ham Knighton L. S. Com. Co.	3,188.17	19%	11%*	10.11%	.82%	5.38%	382.78	3,200.00
2363	J. M. Laird and G. T. Laird, Partners d/b as Laird Brothers	11,914.24	50%*	12%	14.52%*	.57%	7.67%	None	9,000.00

2345	Stagner, Pieronnet & Willis L. S. Com. Co., a Corpn.	9,535.85	1%	6%	13.47%	1.16%	9.49%	27.59	10,400.00
2346	Geo. S. Tamblyn, d/b as Tamblyn Com. Co.	5,950.72	..%	..	14.49%	.55%	6.69%	1240.58	8,500.00
2347	Henry F. Carnes, d/b as H. F. Carnes L. S. Com. Co.	1,570.66	24%	19%*	15.89%	2.96%	2.34%	403.88	1,500.00
2348	Warren Cummings, d/b as Warren Cummings L. S. Com. Co.	12,082.91	6%	16%	11.71%	5.94%	8.44%	1564.32	6,000.00
2349	Drumm-Standish Com. Co., a Corpn.	27,682.12	52%*	28%	15.04%	1.22%	10.56%	None	29,500.00
2350	Link Fasken, d/b as Link Fasken L. S. Com. Co.	480.03	..%	..%	11.66%	.....%	5.26%	402.50	750.00
2351	H. E. Long, Robt. B. Perry, and B. W. Perry, Partners d/b as Long-Perry Livestock Com. Co.	11,043.17	6%	14%	18.07%	2.23%	7.59%	2102.73	14,000.00
2352	L. E. Tice, d/b as Knight & Tice Sheep Com. Co.	3,947.78	14%	31%	.....%	.....%	11.06%	2860.39	5,000.00
2353	Chas. F. Vieregg & Robt. H. Stover, Partners, d/b as W. M. Leitch Sheep Com. Co.	2,162.76	13%	11%	.....%	.....%	10.48%	4247.65	10,000.00
2354	National Livestock Com. Co., a Corpn.	51,951.86	18%	17%	13.36%	3.39%	10.96%	1124.18	36,000.00
2355	Bryant Poole, D. L. Dempsey & James Rutherford, Partners doing business as Poole-Dempsey-Rutherford L. S. Com. Co.	8,623.74	6%	22%	13.62%	3.93%	6.38%	2065.10	12,500.00
2356	Harry Kennaley, d/b as Harry Kennaley Com. Co.	5,044.28	2%*	23%	11.38%	.95%	8.64%	.....	10,000.00
2357	Ehrke-Martin L. S. Com. Co., a Corporation	7,580.08	5%*	23%	10.92%	3.97%	6.19%	1082.04	8,200.00
2358	John Clay, F. H. Connor, Alan F. Wilson & Chas. G. Smith, Partners d/b as John Clay & Company	53,222.32	18%	8%	16.36%	4.31%	13.33%	None	10,000.00
2359	Ralph W. Wright & Wm. N. Baucus, Partners, d/b as Wright & Baucus Livestock Com. Co.	23,480.77	5%	14%	12.93%	4.42%	2.20%	2222.53	13,500.00
2360	Swift & Henry Livestock Com. Co., a Corpn.	51,577.18	14%	14%	13.93%	2.91%	12.98%	None	41,800.00
2361	L. Knop, Henry F. Theis, F. W. Theis, and A. C. Theis, Partners d/b as H. Theis & Sons	14,024.77	8%	17%	13.96%	.06%	10.48%	624.19	16,500.00
2362	Ham Knighton, d/b as Ham Knighton L. S. Com. Co.	3,188.17	19%	11%*	10.11%	.82%	5.38%	382.78	3,200.00
2363	J. M. Laird and G. T. Laird, Partners d/b as Laird Brothers Livestock Com. Co.	11,214.34	50%*	13%	14.52%*	.57%	7.67%	None	9,000.00
2364	Martin, Blonquist & Lee Com. Co., a Corpn.	65,826.05	21%	7%	15.33%	6.33%	9.07%	None	42,200.00
2365	H. M. Baker, W. C. Bradshaw, Barney Metz and Louise M. Moffett, Partners d/b as Moffett Livestock Com. Co.	13,554.95	3%*	16%	13.24%	7.80%	11.61%	None	11,000.00
2366	Jay D. McCormick, d/b as Jay D. McCormick L. S. Com. Co.	1,965.08	17%	5%*	12.76%	.82%	9.26%	970.18	2,000.00
2367	W. C. Kile, d/b as Kile Com. Co.	10,862.15	20%	7%	13.25%	4.11%	10.75%	None	6,000.00
2368	Ryan-Robinson Com. Co., a Corpn.	24,414.25	0	9%	14.04%	5.28%	9.50%	None	18,050.00
2369	Ben L. Welsh, d/b as Welsh Livestock Com. Co.	1,577.38	10%	..%	15.79%	4%	6.45%	225.01	1,500.00
2370	Witherspoon Livestock Com. Co., a Corpn.	2,756.36	14%	19%	16.63%	11.41%	9.62%	None	19,283.50
2371	W. E. Curtis, d/b as W. E. Curtis & Company	8,909.64	29%	4%*	15.07%	1.55%	9.84%	None	6,000.00
2372	Norman B. Greer, d/b as Greer & Company	3,498.28	10%	21%	11.93%	3.97%	10.49%	1443.47	3,500.00
2373	Inman-Hutton Livestock Com. Co., a Corpn.	9,023.35	38%	33%	14.33%	5.21%	7.62%	1192.58	11,000.00
2374	Walter G. Land & John E. Maze, Partners, d/b as Walter G. Land Livestock Com. Co.	6,241.89	5%	26%	13.51%	8.73%	8.05%	None	3,000.00
2375	Less White, d/b as Less White Livestock Com. Co.	3,906.86	12%*	3%	13.11%	3.12%	9.58%	714.95	4,000.00
2376	Wilson Egan & Co., a Corporation	28,725.01	10%	23%	16.14%	4.36%	6.28%	20.22	26,000.00
2377	Burlington Livestock Com. Co., a Corpn.	45,631.05	51%	25%	15.50%	3.65%	7.33%	4080.74	24,083.55
2378	Cassidy Southwestern Com. Co., a Corpn.	20,579.93	..%	..%	13.81%	2.39%	11.46%	948.31	16,000.00

LEGEND

(1) The figures in this column are alleged in the petition to represent the amount by which the gross revenue which would have been received by petitioner in the year 1931 if the Schedule of Rates and Charges prescribed by the Order had been in force and effect would have been less than the total calculable costs incurred by petitioner in the rendition of stockyard services (Res. Exh. 207).

(2) Alleged to be the amount in percentage by which the gross yield to individual petitioner of charges actually collected in 1932 was less than the gross yield of charges collected in 1931.

(3) Alleged amount in percentage by which the gross revenue of petitioner was less for the first five months of 1933 than during the first five months of 1932.

(4) Alleged to represent in percentage the amount by which the Schedule of Rates and Charges ordered by the Secretary if applied to the business of individual petitioner would reduce revenues in respect to cattle and calves.

(5) Alleged to be the amount in percentage by which the Schedule of Rates and Charges ordered by the Secretary if applied to the business of petitioner would reduce revenues in respect to hogs.

(6) Alleged to be representative in percentage of amount by which the Schedule of Rates and Charges ordered by the Secretary if applied to the business of the individual petitioner would reduce revenues in respect to sheep.

(7) Alleged to represent the total compensation for personal services rendered by the owners of petitioner agency if the rates and charges ordered by the Secretary had been in effect in 1931 and petitioner incurred costs exclusive of any compensation to owners for personal service, as found by Government's Chief Accountant in Cost Study introduced in evidence (Ex. 115).

(8) Alleged to be representative of the reasonable value of the personal services rendered by the owner or owners of petitioner agency as shown by evidence submitted in behalf of the appellants. The number of owners in respect to each agency is set out in the evidence and in the individual petitions and the amount given includes all owners actually employed in the rendition of the service in connection with the operations of the individual petitioner in the year 1931.

(*) Indicates gain instead of loss.

December 13, 1935

Identified and approved as Item 2 of Stipulated Præcipe for record on appeal in Morgan, et al. v, United States of America, et al., in Equity No. 2328,

John B. Gage,
Attorneys for Appellants.

Wendell Berge,
Attorneys for Appellees.

[fol. 150] IN UNITED STATES DISTRICT COURT

TEMPORARY RESTRAINING ORDER—Filed July 22, 1933

Now on this 22nd day of July, 1933, comes the petitioner as plaintiff herein, and presents to the undersigned Judges of this Court a verified petition wherein it is prayed that an order staying and suspending the enforcement, operation and execution of the Order of June 14, 1933, of the defendant Secretary of Agriculture issue against the defendants, and each of them, as in said petition prayed.

And the Court, being duly advised in the premises, finds that notice of application for such Restraining Order has been duly given to the defendants in accordance with law and that immediate and irreparable injury and damage will result to petitioner unless such Order shall issue according to the prayer of the Petition, and that petitioner is entitled to a temporary restraining of Stay Order as prayed, in this:

That petitioner has an established business as a market agency, registered under the Packers and Stockyards Act, 1921, engaged in the sale and purchase of livestock for others at the Kansas City Stock Yards, in Kansas City, Missouri, and that if such temporary restraining and stay order suspending the enforcement of said Order of the Secretary of Agriculture is not granted, the defendants will, before the hearing upon the application for temporary injunction as prayed in said Petition, have it within their power, and they will, proceed to enforce the penalties provided for violation of said Order by the Packers and [fol. 151] Stockyards Act, 1921, and will institute a multiplicity of suits against the petitioner on each of the grounds of supposed violation aforesaid and otherwise proceed in derogation of the right of the petitioner to collect rates and charges for stockyard services rendered under the Schedule of Rates and Charges or tariffs now on file by petitioner with the Secretary of Agriculture, and that upon compliance with said Order the petitioner would be unable to collect from the users of its service the differences between the rates fixed by the said Order of the Secretary and the rates prescribed in the Schedule of Rates and Charges now on file with the Secretary of Agriculture. In the event the relief in said petition prayed was finally granted by this Court, the amounts which petitioner alleges

it is legally entitled to receive according to such established and filed rates and charges would be wholly lost to the petitioner, causing it loss from day to day in the State of Missouri, and plaintiff would be irreparably deprived thereof in violation of the Fifth Amendment of the Constitution of the United States.

Now, therefore, it is by this Court ordered that the defendant Henry A. Wallace, Secretary of Agriculture, and each and all of the officers, attorneys, solicitors, agents and representatives of the United States, and all other persons acting or claiming, or assuming to act, for and under authority of the defendants, or either of them, and all other persons who now seek or attempt, or shall hereafter seek or attempt, to interfere with or abridge the right of the plaintiff or do any act in any wise militating against the right of the plaintiff to collect, demand, receive and retain rates and charges for stockyard services at the Kansas [fol. 152] City Stock Yards in accordance with the Schedule of Rates and Charges of petitioner now on file with the Secretary of Agriculture be, and they are hereby, restrained and enjoined from instituting, prosecuting, or aiding in instituting or prosecuting, any proceeding or action for penalties, fines or imprisonment against the petitioner or its agents because of failure to comply with said Order of the Secretary of Agriculture of June 14, 1933, and the enforcement, operation and execution of said Order, and each and every part thereof, by the defendants or any persons acting or claiming, or assuming to act, for or under the authority of defendants, is hereby stayed and suspended for 60 days from the date of this Order, or until further order of this Court.

Provided, however, that the petitioner shall deposit with the Clerk of this Court on Monday of each and every week hereafter while this order, or any extension thereof, may remain in force and effect and pending final disposition of this cause, the full amount by which the charges collected under the Schedule of Rates in effect exceeds the amount which would have been collected under the rates prescribed in the Order of the Secretary, together with a verified statement of the names and addresses of all persons upon whose behalf such amounts are collected by petitioner.

Arba S. Van Valkenburgh, Albert L. Reeves, Merrill E. Otis, Judges.

[fol. 153] The Clerk is directed to enter the above order of record, and to enter an identical order in Cases Numbered 2329 to 2378, both inclusive, In Equity, in this Court, making the identical order in each of said cases.

Dated this 22nd day of July, 1933.

Arba S. Van Valkenburgh, Albert L. Reeves, Merrill E. Otis, Judges.

[File endorsement omitted.]

IN UNITED STATES DISTRICT COURT

MOTION TO STRIKE PORTIONS OF PETITION—Filed Sept. 5, 1933

Come now the defendants in the above-entitled cause and move that an order be entered herein requiring that the following portions of the petition be stricken for the reasons hereinafter stated:

1. All of Section IV of said petition;

2. All of Sub-section (a) of Section V of said petition;

3. The first two paragraphs of Sub-section (b) of Section V of said petition;

4. The last 15 lines of Sub-section (d) of Section V of said petition, commencing with the words "The undisputed [fol. 154] testimony shows" in the middle of page 11 of said petition;

5. All of Section VI of said petition;

6. All of Sub-section (a) of Section VII of said petition;

7. The last 11 lines of Sub-section (b) of Section VII of said petition, commencing with the words, "The statement contained" in the middle of page 19 of said petition;

8. All of Sub-section (c) of Section VII of said petition;

9. The last 5 lines of Sub-section (d) of Section VII of said petition, commencing with the words, "As to the 59 respondents" just below the middle of page 20 of said petition;

10. All of Sub-section (f) of Section VII of said petition;

11. All of Sub-section (a), (b), and (c) of Section VIII of said petition;

12. The last 16 lines of Sub-section (d) of Section VIII of said petition, commencing with the words, "on page 39" in the middle of page 24 of said petition;

13. All of Sub-section (e) of Section VIII of said petition;

14. All of Section IX of said petition;

for the reason that the allegations contained in said portions of said petition are impertinent, redundant, incompetent, irrelevant and immaterial to any issue which may properly be raised in this suit, and the defendants ought not to be required to answer the same.

[fol. 155] Wherefore, the defendants pray that said portions of said petition be stricken therefrom, and that an order be entered accordingly.

Harold M. Stephens, Assistant Attorney General. Wendell Berge, Special Assistant to the Attorney General. William L. Vandeventer, United States Attorney. Seth Thomas, Solicitor of the Department of Agriculture. J. S. Bohannan, Attorney, Department of Agriculture.

[File endorsement omitted.]

IN UNITED STATES DISTRICT COURT

ORDER OVERRULING MOTIONS TO STRIKE—Filed Sept. 9, 1933.

On August 25, 1933, the following stipulation was entered into by the parties in the above entitled case and cases 2329 to 2378, inclusive:

"Stipulation

It is hereby stipulated and agreed by and between the parties to the above-entitled cause and the similar pending

causes numbered 2329-2378, inclusive, that the defendants shall have until September 9, 1933, for filing their answers.

Dated this 25th day of August, 1933.

(Signed) John B. Gage, Solicitor for Petitioners. Wendell Berge, Special Assistant to the Attorney General."

[fol. 156] Pursuant to this stipulation the Court, on August 25, 1933, entered an order as follows:

"Order

It is hereby Ordered that defendants shall have until September 9, 1933, to file their answers in the above cause.

The Clerk is directed to enter the above order of record and to enter an identical order in cases numbered 2329 to 2378, inclusive, in Equity, in this Court making an identical order in each of said cases.

Dated this 25th day of August, 1933.

Arba S. Van Valkenburgh, United States Circuit Judge. Albert L. Reeves, United States District Judge. Merrill E. Otis, United States District Judge."

Notwithstanding the foregoing stipulation and order, the defendants, on the 5th day of September, 1933, filed in each of the cases referred to in the stipulation and order a motion to strike.

After conference and due consideration, the Court is of the opinion that the questions raised by the motions to strike should be taken with the cases and that the defendants should file answers in accordance with the stipulation. The motions to strike, therefore, will be overruled without prejudice to the later presentation of the questions raised in the motions.

Order

The motions to strike the bills in equity in the above entitled case and in cases numbers 2329 to 2378, inclusive, [fol. 157] are overruled. It is so ordered.

It is further ordered that the defendants have until September 19, 1933, within which to file answers in all of said cases.

Dated this 9th day of September, 1933.

Arba S. Van Valkenburgh, United States Circuit Judge. Albert L. Reeves, United States District Judge. Merrill E. Otis, United States District Judge.

[File endorsement omitted.]

IN UNITED STATES DISTRICT COURT

ORDER SETTING ASIDE ORDER OVERRULING MOTIONS TO STRIKE, ETC.—Filed Sept. 13, 1933

On the motion of defendants and for good cause shown, the order of September 9, 1933, in case No. 2328 and cases 2329 to 2378, inclusive, wherein defendant's motions to strike certain portions of the petitions in said cases was overruled, is set aside. It is so ordered.

It is further ordered that defendants' motions to strike be and they are set down for oral argument on Friday, September 29, 1933.

Arba S. Van Valkenburgh, United States Circuit Judge. Albert L. Reeves, United States District Judge. Merrill E. Otis, United States District Judge.

[File endorsement omitted.]

[fol. 158] IN UNITED STATES DISTRICT COURT

ORDER CONTINUING IN FORCE TEMPORARY RESTRAINING ORDER HERETOFORE GRANTED—Filed Sept. 19, 1933

Now on this 19th day of September, 1933, comes the petitioner as plaintiff herein, and it appearing that the hearing upon the application for a temporary injunction herein has been continued, and that the time allowed by law for the filing of answer herein has been extended by the Court at the request of the defendants;

And the Court being duly advised in the premises, finds that immediate and irreparable injury and damage will result to petitioner unless the temporary restraining order hereinbefore issued is extended and continued in force and effect,

Now therefore, it is by this Court Ordered that the temporary restraining order herein issued be and hereby is continued in whole and in accordance with all the terms and conditions thereof in force and effect until decision by this Court upon the application for a temporary injunction as prayed for in the petition filed herein.

Arba S. Van Valkenburgh, Circuit Judge. Albert L. Reeves, District Judge.

The Clerk is directed to enter an identical order in Causes 2329 to 2378, both inclusive, in equity, by this Court, making the identical Order effective in each of said cases.

[fol. 159] Dated this 19th day of September, 1933.

Arba S. Van Valkenburgh, Circuit Judge. Albert L. Reeves, District Judge.

[File endorsement omitted.]

IN UNITED STATES DISTRICT COURT

ORDER ON DEFENDANTS' MOTION TO STRIKE PORTIONS OF PETITIONS—Filed Oct. 27, 1933

The motions of the defendants to strike certain portions of the petitions in these cases, having been duly considered by the Court, and the Court being fully advised in the premises, are in part sustained and in part overruled, as follows:

Subdivision 1 of the motions to strike, directed at all of Section IV in each of the petitions, and subdivision 14 of the motions to strike, being directed at all of Section IX in each of the petitions, are sustained.

All other subdivisions of the motions to strike are overruled.

In so far as the motions to strike are sustained, the petitioners are allowed exceptions. In so far as the motions to strike are overruled, the defendants are allowed exceptions.

Since Sections IV and IX in each of the petitions are wholly independent of all other parts of the petition and since, therefore, a recasting of the petitions is not made necessary by this order, petitioners are not required to file amended petitions. Defendants are allowed thirty days [fol. 160] within which to file answers to the petitions as modified by this order.

It is so ordered.

Arba S. Van Valkenburgh, United States Circuit Judge. Albert L. Reeves, United States District Judge. Merrill E. Otis, United States District Judge.

[File endorsement omitted.]

IN UNITED STATES DISTRICT COURT

ANSWER—Filed Nov. 25, 1933

Come now the defendants in the above-entitled cause and companion cases, and make answer to the petitions hereinbefore filed as follows:

1. Defendants admit the allegations contained in Sections I to III of said petitions.

2. Answering Section V of said petitions, defendants deny each and every allegation contained therein, except as hereinafter otherwise expressly admitted.

(a) Further answering Section V of said petitions and particularly subsection (a) thereof, defendants admit that the evidence shows that the diminution in the net moneys available to owners of petitioner market agencies in 1931, as compared with the net moneys available to such owners [fol. 161] in 1929, was due in part to a reduction of approximately 13% in gross revenues, and that petitioner market agencies did not reduce proportionately their operating costs, but defendants deny that such costs could not have been reduced. Defendants are without knowledge as to the amount of the selling and buying charges collected by petitioner market agencies during the year 1932 or during the first five months of the year 1933, but say that such matters are not relevant or material to the determination of these

cases and that proof thereof is not admissible before this Court.

(b) Further answering Section V of said petitions and particularly subsection (b) thereof, defendants admit that the Secretary found in his Order (Paragraphs 142 and 143) that it is reasonable to expect a good and experienced salesman of cattle and calves to sell 29,000 head of cattle and calves per year; such a salesman of hogs to sell 85,000 head of hogs per year; and such a salesman of sheep to sell 250,000 head of sheep per year. Defendants say that the above estimates of what constitutes a reasonable year's work for salesmen are below the estimates of those salesmen who testified, and that a considerable number of salesmen now employed by petitioner market agencies at Kansas City have attained and exceeded the standard of performance mentioned in the Order, notwithstanding the highly competitive and overmanned condition existing at the Kan- [fol. 162] sas City market. Defendants admit that the Secretary found that the conditions under which salesmanship is performed at the Kansas City market customarily include services incidental to the selling operation, and that these services include the maintenance of contacts with the owners of livestock prior to shipment, appraisal in the country, supervision enroute to market either while on pasture, in feed lots, or at railroad feeding stations, keeping informed as to changing market conditions, sorting and grading livestock at the market, consulting with owners of livestock at the market, or advising them of the result of sales if away from the market, together with other miscellaneous duties. Defendants further admit the allegation that the evidence at the hearing showed that livestock salesmen, unlike ordinary salesmen, determine the price for the commodity they sell.

(c) Further answering Section V of said petitions and particularly subsection (d) thereof, defendants admit that the costs classified as "Business-Getting and Maintaining Expenses" include amounts actually expended during the year 1931 by petitioner market agencies for traveling expenses incident to the appraisal of livestock before a sale, and supervising the feeding of livestock en route to market at feeding stations, advertising, the preparation, printing and posting of circulars and market reports sent to stock- [fol. 163] men; automobile maintenance and transportation;

and dues and assessments paid to the Kansas City Live Stock Exchange. Answering the allegation that during the period mentioned in the Order commission rates at the Chicago and St. Louis markets were substantially higher than those charged by petitioner market agencies, defendants say that such matters are not relevant or material to the determination of this case, and therefore require no answer. Answering the allegation that the undisputed evidence discloses the intensity of competitive efforts of packers and others to divert livestock from the Kansas City market, defendants admit that this is true only as to hogs.

3. Answering Section VI of said petitions, defendants deny each and every allegation contained therein, except as hereinafter otherwise expressly admitted.

(a) Further answering Section VI of said petitions and particularly subsection (a) thereof, defendants deny that the Schedule of Rates and Charges first placed under inquiry was established after hearing and investigation by the then Secretary as a just, reasonable and nondiscriminatory schedule of rates and charges. Defendants say that such Schedule was determined in 1923 by an arbitration proceeding, that such proceeding was conducted upon the suggestion and agreement of the private parties thereto, and that the persons who served as arbiters therein were [fol. 164] chosen and agreed upon by said private parties and did not serve in any official capacity which they may have possessed under the Government of the United States but purely by virtue of their selection by agreement of the parties to said proceeding; that the then Secretary of Agriculture merely gave his approval to said plan of arbitration as a mode of compromise and settlement agreeable to the parties thereto. Defendants admit that the Schedule of Rates and Charges agreed upon at said arbitration in 1923 was higher by more than 10% than the rates and charges found to be unjust and unreasonable by the Secretary in this proceeding, and further admit that the rates and charges under inquiry expressed in percentage of net sales proceeds handled were less at the time of the hearing than 2% thereof and less than the charges for commission or brokerage service for selling other agricultural produce. Defendants further admit that during the period of the World War, and from 1913 to 1919, the rates charged by petitioner market agencies were increased by 10% and that

increases of approximately 200% occurred in the cost of living, farm wages, general hourly wages and livestock prices. But defendants say that none of the allegations in said subsection (a) is relevant or material to the determination of this case.

(b) Further answering Section VI of said petitions and particularly subsection (b) thereof, defendants admit that [fol. 165] the Secretary stated in Paragraph 129 of his Order that the Packers and Stockyards Act, 1921, does not clothe the Secretary with authority to determine how many agencies would be required to handle properly the business at the Kansas City Stockyards. Defendants say that none of the allegations contained in said subsection (b) is relevant or material to the determination of this case. . . .

(c) Further answering Section VI of said petitions and particularly subsection (d) thereof, defendants admit that the Secretary found (Paragraph 50 of the Order) that the demand for livestock at Kansas City, especially for hogs, is greater than that supplied by the livestock arriving at the public market and that a large number of hogs destined for local slaughter does not pass through the stockyards but is purchased directly by packers. Defendants admit that the market price determined at the public stockyards at Kansas City and elsewhere has much weight in determining the prices paid for livestock bought and sold at private stockyards, but say that such matters are not relevant or material to the determination of this case. The allegation that the packers acquire livestock off the public market without contributing proportionately to the cost of maintenance of the public market at Kansas City is likewise wholly irrelevant and immaterial to the validity of the Secretary's Order, and to this suit.

(d) Further answering Section VI of said petitions and [fol. 166] particularly subsection (e) thereof, defendants admit that the Order contains a finding of fact (Paragraph 19 of the Order) that livestock tends to move from producer to consumer by the most economical route.

4. Answering Section VII of said petitions, defendants deny each and every allegation contained therein, except as hereinafter otherwise expressly admitted.

(a) Further answering Section VII of said petitions and particularly subsection (a) thereof, defendants admit that the costs and expenses recognized by the Government accountant included no expenses incident to interest paid, donations to Community Chests, reserve to meet uninsurable hazards, or allowance for profits, but defendants deny the inference that the Secretary was bound by the opinion of the Government accountant in these respects, and say that the Secretary made a proper allowance for interest, reserve to meet uninsurable hazards, and profits. Answering the allegation on page 17 of the petition to the effect that the separation of species costs into functional costs such as selling, yarding, office work, administration, business getting, etc., was arbitrary and not based on any natural segregations incident to the actual performance of these functions, defendants say that the business of petitioner market agencies naturally divides itself into such functional divisions; that such divisions were followed by the accountant who testified for petitioner market agencies; and that such functional division for the purpose of determining costs [fol. 167] is not affected by the fact that the same men commonly perform several different functions. Defendants further say that such separation of costs into functional costs is not arbitrary and that it does not vary from the facts of the business of petitioner market agencies. Defendants admit that the reasonable unit costs found by the Secretary are lower in most instances than those costs actually incurred by petitioner market agencies, and defendants say that the purpose of the inquiry was not to construct a rate order based upon costs actually incurred in maintaining an overly-competitive market, but rather to determine what costs are reasonable. Defendants further say that the Order of the Secretary is not to be tested by whether it allows costs actually incurred but rather by whether the costs allowed in the Order are in themselves reasonable to the shippers of livestock and to the market agencies.

(b) Further answering Section VII of said petitions and particularly subsection (b) thereof, defendants say that the Order in Paragraphs 159 to 163 allows reasonable per head costs to cover compensation for management. Defendants admit that in Paragraph 159 of the Order the cost of management of the two cooperative market agencies on the Kansas City Stockyard is taken into account in determining fair management costs.

(c) Further answering Section VII of said petitions and particularly subsection (c) thereof, defendants admit that [fol. 168] the Order does not allow as an element and part of the capital of petitioners any amount for going concern value. Defendants further admit that the Order holds that a rate of return of 6% on fixed capital and 7% on working capital used by petitioner is reasonable, and that the Order allows that amount only in calculating the gross return recognized and covered into the rates and charges established.

(d) Further answering Section VII of said petitions and particularly subsection (e) thereof, defendants admit that the Secretary disallowed as elements of reasonable cost, and did not cover into the rates and charges prescribed, moneys expended for donations to the Community Chests maintained by the Chambers of Commerce in Kansas City, Missouri, and Kansas City, Kansas.

(e) Further answering Section VII of said petitions and particularly subsection (f) thereof, defendants admit that the effect of the Schedule of Rates and Charges is to permit increases in rates to dealers registered under the Packers and Stockyards Act, 1921, and to permit increases in rates and charges for buying livestock.

5. Answering Section VIII of said petitions, defendants deny each and every allegation contained therein, except as hereinafter otherwise expressly admitted.

(a) Further answering Section VIII of said petitions and particularly subsection (a) thereof, defendants deny [fol. 169] on information and belief the allegation therein contained to the effect that if the prescribed Schedule of Rates and Charges had been in force in 1931 each petitioner would have received an amount, stated in each petition, less than the total calculable costs incurred by each such petitioner in the rendition of stockyards services that year.

Defendants are without knowledge as to the truth of the allegations that the gross yield to each petitioner of the rates and charges collected was less in 1932 by a stated percentage than the revenue received in 1931, and that the gross yield for the first five months of 1933 was less by a stated percentage than that for the first five months of 1932, and also the allegation of the percentage of further

reduction which the application of the prescribed rates and charges would cause each petitioner as to each species handled, but defendants say that such matters are irrelevant and immaterial to the determination of this case, and that proof thereof is not admissible before this Court.

Further answering said subsection (a), defendants say that none of the facts alleged therein is relevant or material to the validity of the Secretary's Order, or to this suit, and that the lawfulness of the rates and charges prescribed in said Order is not to be determined by whether or not each petitioner could earn a sufficient amount thereunder to cover costs as high as those heretofore incurred.

(b) Further answering Section VIII of said petitions [fol. 170] and particularly subsection (b) thereof, defendants say that the accountant who testified for the Secretary did not in his cost study set forth the total costs of operation of petitioners for the purpose of showing what were reasonable costs, but he merely testified as to the amount of such costs as he found them. Defendants say that it is irrelevant and immaterial to the validity of the Secretary's Order and to this suit whether or not the gross yield of rates and charges prescribed in the Order, if applied in 1931, would have been less than the cost of operation of the business of any one petitioner during that year. Further answering said subsection (b), and particularly lines six to twenty-three, inclusive, thereof, defendants are without knowledge as to the truth of the allegations therein contained and they therefore deny on information and belief each and every such allegation.

(c) Further answering Section VIII of said petitions and particularly subsection (d) thereof, defendants admit that on page 39 the Order shows that 11 firms handled more than 50% of the total market volume of livestock at the Kansas City Stockyards in 1931, and that 23 firms handled over 75% of the total market volume. Defendants deny the allegation that the Order bases the rates and charges prescribed therein upon the assumption that the firms doing the largest relative volume of business operated their businesses more economically and efficiently than other firms doing a lesser volume of business. Defendants deny upon [fol. 171] information and belief all of the other allegations of said subsection (d).

(d) Further answering Section VIII of said petitions and particularly subsection (e) thereof, defendants are without knowledge as to the truth of the allegation therein contained, but say that such matter is not relevant or material to the determination of this case, and that proof thereof is not admissible before this Court.

6. Except as herein otherwise expressly admitted, defendants deny the truth of each and all of the allegations contained in said petitions.

Wherefore, having fully answered, defendants pray that the petitions be dismissed at the cost of the petitioners and for the benefit of such other order or orders as the Court may deem appropriate.

Harold M. Stephens, Assistant Attorney General. Wendell Berge, Special Assistant to the Attorney General. William L. Vandeventer, United States Attorney. Seth Thomas, Solicitor, Department of Agriculture. J. S. Bohannan, Attorney, Department of Agriculture. G. N. Dagger, Attorney, Department of Agriculture.

[File endorsement omitted.]

[fol. 172] IN UNITED STATES DISTRICT COURT

Before Van Valkenburgh, Circuit Judge, and Reeves and Otis, District Judges

OPINION OF THE COURT—Filed Oct. 29, 1934

OTIS, District Judge, delivered the opinion of the Court:

These are fifty-nine cases in equity contemporaneously initiated in this Court, submitted together and now for decision after final hearing. The prayer of the petition in each case is for injunctive relief against the enforcement of a certain order of the Secretary of Agriculture, dated June 14, 1933, fixing maximum rates and charges for stockyard services rendered by the petitioners at the Kansas City Stockyards in Kansas City, Missouri.

The business of each of the petitioners is that of a live-stock selling and buying (or marketing) agency. It is a business affected with a public interest whose rates and charges for services rendered by it to its patrons are subject to governmental regulation. Since the business of each of the petitioners directly affects commerce among the several states Congress is authorized by the Constitution to legislate touching such rates and charges. Congress has done that in the so-called Packers and Stockyards Act (42 Stat. L. 163), providing in that Act that such rates and charges shall be such only as are reasonable and delegating to the Secretary of Agriculture the function and power of determining what rates and charges are reasonable. The validity of this legislation has been determined by the Su- [fol. 173] preme Court (Tagg Bros. v. United States, 280 U. S. 420) and is not questioned in these cases.

The Packers and Stockyards Act provides that—

Sec. 310. Whenever after full hearing upon a complaint made as provided in Section 309, or after full hearing under an order for investigation and hearing made by the Secretary on his own initiative, either in extension of any pending complaint or without any complaint whatever, the Secretary is of the opinion that any rate, charge, regulation, or practice of a stockyard owner or market agency, for or in connection with the furnishing of stockyard services, is or will be unjust, unreasonable, or discriminatory, the Secretary—

(a) May determine and prescribe what will be the just and reasonable rate or charge, or rates or charges, to be thereafter observed in such case, or the maximum or minimum, to be charged and what regulation or practice is or will be just, reasonable, and nondiscriminatory to be thereafter followed; and

(b) May make an order that such owner or operator (1) shall cease and desist from such violation to the extent to which the Secretary finds that it does or will exist; (2) shall not thereafter publish, demand, or collect any rate or charge for the furnishing of stockyard services other than the rate or charge so prescribed, or in excess of the maximum or less than the minimum so prescribed, as the case may be; and (3) shall conform to and observe the regulation or practice so prescribed.

Pursuant to the provisions of the Act the Secretary of Agriculture on his own initiative on April 7, 1930, ordered an inquiry into the reasonableness of the rates and charges of the petitioners for stockyard services rendered by them. A hearing followed before an examiner designated for that purpose. Testimony was taken by him which fills 6721 type-[fol. 174] written pages in addition to which 159 exhibits were offered in evidence. Followed an oral argument before an "Acting Secretary of Agriculture." Thereafter, on May 18, 1932, the Secretary of Agriculture issued an order fixing the maximum rates and charges. A petition for rehearing was granted July 15, 1932. At the rehearing conducted by an examiner testimony was taken which fills 3091 typewritten pages in addition to which 111 exhibits were offered in evidence. Followed a second oral argument before an "Acting Secretary of Agriculture." Thereafter, on June 14, 1933, the Secretary of Agriculture made and issued findings of facts and the order based thereon fixing rates and charges which is now attacked. A petition for a rehearing as to this order was denied.

The rates and charges of petitioners which were in effect on June 13, 1933, and which the Secretary held were unreasonable were in the form of a fixed charge per head of livestock bought or sold, the charge varying with the kind of livestock and with the number of animals involved in any transaction. Thus, for selling calves the charge was thirty cents per head for a consignment of from 1 to 20 head and twenty-five cents per head for all over 20 head. The maximum charges ordered by the Secretary were in the same form. For illustration, the Secretary's order required that the maximum selling charge as to calves should be: thirty-five cents per head in a consignment of one head, twenty cents a head in a consignment of from 1 to 40 head, five cents per head for all over 40 head.

We preface with this brief preliminary statement our [fol. 175] consideration of the issues.

In so far as the subject yet has been developed in judicial opinions there are possible only five attacks on such an order as that with which we are here concerned and the petitioners have made all of them save one. They are: (1) that the statutory procedure was not followed; (2) that the findings do not support the order; (3) that the findings are not supported by the evidence; (4) that erroneous rules

of law were followed to reach the findings; (5) that the rates and charges fixed in the order are confiscatory and so violative of constitutional rights. Tagg Bros. v. United States, supra; Interstate Commerce Commission v. Illinois Central R. Co., 215 U. S. 452, 454.

The Procedure

1. Before the Secretary lawfully can make an order of this character he must accord a "full hearing to the interested parties." Sec. 310 of the Act. In the petitions it was alleged that a full hearing was denied in that: (1) each and every of the petitioners was denied a separate hearing; (2) that the Secretary of Agriculture in person did not hear arguments on the evidence but without authority in law delegated that duty to assistant secretaries designated as Acting Secretaries; and (3) that the Secretary signed the order without reading the evidence. On a preliminary hearing we sustained a motion to strike these allegations from the petitions. We think it is unnecessary now to elab- [fol. 176] orate the obvious observation that the theory of these allegations is supported by nothing in the Act and that a construction of the Act consistent with that theory would destroy it altogether as a measure capable of practical administration.

Findings Support Order

2. The Secretary made 162 findings of fact upon the evidence heard at the original hearing and at the rehearing. No contention is made but that these findings support the order. Unquestionably they do support the order and that fully.

Findings Supported by Evidence

3. The business of a livestock agency is of a personal service character requiring little invested capital. To arrive at what are reasonable rates and charges for the services rendered by such an agency at a given place, as at the Kansas City Stockyards in Kansas City, Missouri, the following factors must be considered: (1) the total volume of business to be transacted; (2) the number of men required for the efficient handling of that business; (3) the reasonable cost of handling the business, including reasonable

compensation of the men necessarily employed and other necessary and proper costs; (4) the capital investment required for the efficient handling of the volume of business reasonably to be expected; (5) what is a proper return on the capital so invested; (6) what is a reasonable compensation for management and a reasonable profit. The findings made by the Secretary included all of these factors [fol. 177] and every other conceivable factor necessary to be considered. Some of the findings are challenged as contrary to the evidence.

Save possibly where the issue of confiscation is for determination the settled rule is that the findings of the Secretary in a proceeding of this character "must be accepted by the court as conclusive, if the evidence before him was legally sufficient to maintain them." Tagg Bros. v. United States, et al., 280 U. S. 420, 444. The court is not concerned with the weight of the evidence, with whether its judgment concurs with that of the Secretary, but only with the question: is any finding essential to the order under review unsupported by any substantial evidence?

With this rule in mind we have gone to the record, with the aid of briefs submitted, and have found therein substantial testimony to support every challenged finding, nor do we find any justification for the contention of petitioners that in arriving at his findings material and relevant evidence was ignored. The important and essential findings, such as, for example, how many hogs an efficient salesman should sell in a given time, what are reasonably compensatory salaries salesmen should receive, what costs are legitimate and what unnecessary, what wastes may be eliminated, indeed almost every finding that was made except those which were merely statistical, clearly depend upon the application to the testimony of the judgment of him charged with the duty of making findings. That duty the law imposes on the Secretary. We cannot overturn his judgment as to such matters when there is evidence to support his findings.

[fol. 178] Claimed Errors of Law

It is true that such an order as the one here attacked must be set aside if it rests upon an erroneous rule of law. Tagg Bros. v. United States, 280 U. S. 420, 442. The petitioners assert the applicability of this principle to these

cases, but just what erroneous rules of law the petitioners claim were applied by the Secretary we have had some difficulty in gathering from the petitions and briefs notwithstanding the great labor able counsel for petitioners obviously have given to their preparation.

There is no contention that the subject matter sought to be regulated was not within the Secretary's jurisdiction under the statute and no allegation, therefore, of any such fundamental legal error as a misinterpretation of the statute would have been. The contentions, as best we can state them (they purport to be set out in Subdivision VII of each of the petitions), are the following:

A. The costs used by the Secretary were arrived at arbitrarily and in disregard of the facts. Clearly this is not a matter of applying an erroneous rule of law, but a matter of whether the evidence supports the findings.

B. The Secretary ruled rightly that the reasonable rates to be fixed should include a profit but erroneously that compensation allowed for management and the carrying of uninsurable risks included the element of profit whereas the cost of management and of carrying uninsurable risks are legitimate expenses and the petitioners are entitled to something additional as profits. The answer to the contention is that if it be conceded that it was error to rule that the [fol. 179] allowance for management and the cost of carrying uninsurable risks necessarily included all the profit to which an owner is entitled in truth the rates fixed had an additional spread, above all costs, including the two specified, which spread allows and provides for the alleged omission.

C. The Secretary rightly ruled that the petitioners were entitled to a return on capital investment, but erroneously excluded any allowances for going concern values. Such is the contention. The evidence whereon the contention is based is to the effect that the methods and practices used by the petitioners were worth (not what they had cost) $66,401. The contention is that a return should be allowed on that amount. The view of the Secretary was that while knowledge of these methods and practices was indispensable anyone is free to use them and they are not property. Such knowledge is a part of the necessary mental equipment of those rendering livestock selling and buying service. Compensation for the service includes full return for

the use of the knowledge of methods and practices. It is not an element of capital investment. We agree.

D. The Secretary erroneously excluded from consideration of costs various legitimate classes of expenses, such as insurance against normal risks. We find in the record no support for this contention.

E. Various other contentions are made in this connection which we think present no errors of law.

[fol. 180] Confiscation

Each of the petitioners claims that the order of the Secretary violates the due process clause of the Fifth Amendment in that it deprives him of his property without due process of law. Whether the presence in these cases of this issue of confiscation entitles the petitioners to the independent judgment of the court as to the law and the facts after a consideration of all of the testimony heard by the Secretary and also additional testimony offered before this Court, never has finally been decided by the Supreme Court. Tagg Bros. v. United States, 280 U. S. 420, 443. The view that those alleging confiscation are entitled to the independent judgment of the court is supported by such cases as Ohio Valley Water Works Company v. Ben Avon Borough, 253 U. S. 287, 289; Bluefield Water Works Company v. Public Service Commission, 262 U. S. 679, 689; Prendergast v. New York Tel. Co., 262 U. S. 43, 50; Lehigh Valley R. Co. v. Board of Public Utility Com., 278 U. S. 24, 36; United Railways & Electric Co. v. West, 289 U. S. 234, 251; Phillips v. Commissioner, 283 U. S. 589, 600. The view that even where the issue of confiscation is present, findings of fact made by the Secretary, if supported by substantial evidence, are conclusive, is supported by a consideration of the text of the Interstate Commerce Act to which the Packers and Stockyards Act refers and by United States v. Louisville and N. R. Co., 235 U. S. 314, 320; Interstate Commerce Commission v. Union Pac. R. Co., 222 U. S. 541, 547, and the dissenting opinion in Ohio Valley Water Works Co. v. Ben Avon Borough, 253 U. S. 287, 297, as well [fol. 181] as by the declination of the Supreme Court to pass upon the matter in Tagg Bros. v. United States, 280 U. S. 420, 443. Whichever of these views is the correct one, it is certain that there is a strong presumption in favor of

the findings made by the Secretary as well as those of any rate making body. Darnell v. Edwards, 244 U. S. 564.

If we proceed on the view that the findings of the Secretary are conclusive, if supported by any evidence, and we have determined that each of them is supported by substantial evidence, then the contentions of petitioners as to confiscation must be resolved against them with the exception of one of those contentions. All of the contentions, excepting one, are based upon the theory that the Secretary's findings as to costs are contrary to the weight of the evidence and that if correct findings were made the costs allowed in fixing rates and charges would be so much greater than those which were allowed as that it would conclusively appear that the rates and charges fixed in the Secretary's order did not adequately provide for costs and so are confiscatory. If, however, having decided that the findings of the Secretary are sustained by substantial evidence, we are bound by his findings, then we are bound also to conclude that the Secretary's order makes full allowance for all reasonable costs in the rates and charges fixed by the order. The one contention as to confiscation not thus disposed of is that the rate of return allowed by the Secretary's order on invested capital of petitioners, which is 6% on fixed capital and 7% on working capital, as a matter of law is confiscatory. We regard that contention as without merit.

[fol. 182] If we adopt the view that, having raised the issue of confiscation, the petitioners are entitled to the independent judgment of this court based upon all of the evidence which was before the Secretary, as well as the additional evidence offered at the trial of these cases. Only presuming that the findings of the Secretary are correct, the same conclusion touching this issue is reached by us. Such an examination of all of the testimony as reasonably can be made, in view of its immense volume, we have made, reaching the conclusion that the essential findings made by the Secretary not only are sustained by substantial evidence but are in accordance with the weight of the evidence. Since those findings are right as to costs and since the rates and charges fixed by the Secretary's order adequately provide for costs and for a return on invested capital and for profits as to all petitioners who have shown that their agencies are efficiently conducted, the issue of confiscation must be resolved against the petitioners.

Other Matters

Contentions of the petitioners which have not been referred to specifically in this opinion have received the consideration of the Court and are resolved against the petitioners.

Findings of Fact

In each of these cases we make findings of fact as follows:

[fol. 183] 1. The order of the Secretary of Agriculture, dated June 14, 1933, fixing maximum rates and charges for petitioners as livestock selling and buying (marketing) agencies in the Kansas City Stockyards, Kansas City, Missouri, was made after full hearings accorded the petitioners, and each of them, and upon findings of fact made by the Secretary based upon the evidence taken at the hearings.

2. The findings of fact made by the Secretary of Agriculture upon which the order of June 14, 1933, was based are supported by substantial evidence.

3. Upon an independent consideration of the evidence, including the additional evidence taken by the court at the trial of these cases, the Court adopts as its findings of fact the findings of fact made by the Secretary and by reference incorporates them herein.

Conclusions of Law

The Court concludes as matters of Law—

1. That the order of the Secretary of Agriculture, dated June 14, 1933, fixing maximum rates and charges for livestock buying and selling (marketing) agencies at the Kansas City Stockyards in Kansas City, Missouri, was made by the Secretary after a full hearing in all respects conforming with the requirements of the Packers and Stockyards Act.

2. That the order is fully supported by the findings of fact made by the Secretary and that those findings were based upon substantial evidence and are supported by the

weight of the evidence and are not based upon any erroneous rules of law.

3. That the maximum rates fixed by the Secretary in [fol. 184] the order are reasonable and that they do not take the property of petitioners, or any of them, without due process of law in violation of the terms and provisions of the Fifth Amendment to the Constitution of the United States.

Indicated Decree

Counsel for the defendants will prepare and submit to the Court for approval and entry in each of these cases a decree dismissing the plaintiff's bill and assessing the costs against the plaintiff.

[File endorsement omitted.]

In United States District Court

Before Van Valkenburgh, Circuit Judge, and Reeves and Otis, District Judges

Concurring Opinion—Filed Oct. 29, 1934

Van Valkenburgh, Circuit Judge, concurring:

I agree with the decision to dismiss the bills, but I feel impelled to add some additional views with respect to some features of the findings made by the Secretary of Agriculture in reaching the conclusions leading to his order.

The reason, or at least the main reason, for the difference between petitioners and Secretary, lies in the matter of cost allowances and reasonable return to owners of the business. As stated by counsel for the Secretary, the substantive questions are:

[fol. 185] 1. Are the Secretary's findings of reasonable costs plus reasonable profits supported by the evidence?

2. Will the prescribed rate schedule produce sufficient revenue to cover the reasonable costs plus reasonable profits as found by the Secretary?

I think we may regard the entire controversy as resolved by an answer to the first of these questions, because the second is practically conceded, the insistence being that the Secretary's allowance of costs is unreasonable and, therefore, that the resulting profits are so unreasonable as to amount to confiscation.

To my mind, basing the allowance of salaries upon the potential ability of a salesman to sell a given number of car-loads in a year is too restrictive. Such ability is not subject to bare mathematical measure. One even casually familiar with stockyard operations knows that an efficient salesman must be a man of sound judgment and experience. His duties in fostering the business of the producer, in causing his product to be reared and brought to sale under favorable market conditions, are of great value and are not subject to mathematical percentage measurement. The stock does not come in such regular periods as to permit a fixed amount of sales, ratably distributed over the market year. When it does come it must be attended to by expert and experienced men to the best advantage of the grower. It is evident, therefore, that an organization must be kept sufficient to handle the business as it is presented. Such employees must be permanent for this purpose. Capable [fol. 186] men cannot be picked up at will. They must have a steady job, and at a wage that will reasonably compensate for the experience they bring and the service they perform. In this period, when it is emphasized that labor must receive a fitting reward, it will not do to visit upon the stockyards agencies, which are recognized as necessary to the commerce, too great a burden because of depression in the stock business. In their zeal to aid the stock raiser, government agencies must not forget the men who are essential to the making of his market. This applies in a lesser degree perhaps to yardmen and others employed in the business. It is to be emphasized that, if a market agency is to do business at all, it must have and maintain an organization sufficient to handle its business when it comes. An examination of record and briefs indicates that in various ways the agencies have striven to keep costs down. Obviously it was to their interest to do so in years lean at the best. Their judgment as to their necessities should not be lightly set aside nor underestimated.

So with respect to getting and maintaining business.

Certainly a considerable amount of advertising, circularizing, and personal contact is proper and necessary to keep this market prominently before the raisers and shippers of stock in this normal trade territory. The market agencies have to compete with other stock markets, with cooperatives, a percentage of whose profits go back to their members, with packers, and railroad yards, and with direct buyers generally. The fact that there may incidentally [fol. 187] result competition between the agencies themselves is no sufficient ground for reducing the costs of such activities to an extremely narrow compass. Also, if such agencies are to continue, the owners, as they are termed, must be allowed to receive a return commensurate with the contribution they make to the success of this market and the risks they assume.

I do not undertake to decide that the costs demanded by petitioners may not in some degree be excessive. Of course, even the most valuable operators cannot expect to make as much out of a small volume of business as out of one much larger; but they must be prepared for any reasonable eventuality, and the return fixed must not be so low as to drive too many of these agencies out of business, to the great injury of this stock-market, and, necessarily, to the shippers of stock, who would most conveniently patronize it. What the future volume of business may be is, of course, speculative, and should not be a controlling rate-making factor. The evidence is that the volume is decreasing during the periods under test. It appears that the order of the Secretary would reduce the number of men employed in handling the 1931 market from 188 to about 79. There were only fifty-nine firms originally petitioning. Nine are said to have retired from business, and, from the evidence before us, a number of others will necessarily follow.

It is true that no reasonable rate can be expected to protect all who may elect to engage in this quasi-public business, without regard to prevailing conditions; but the [fol. 188] protection of the market against lowering an irreducible minimum is as necessary to the public interests as it is to that of the stock shippers themselves.

My reaction to the presentation made is that I should have made a more liberal allowance for costs and owner return—not necessarily as great as that demanded by peti-

tioners, and, of course, with due regard to the number of owners accredited to each firm. Five owners in the same firm cannot each expect to receive the maximum accredited or appraised to one. But it is to be observed that the Secretary has given consideration to all the elements essential to the computation of a general rate of this nature. By the statute he is given almost dictatorial power in the establishment of such rates, provided he gives due consideration to all the elements involved, does not depart from any rule of law, and provided, further, the rates established are not clearly unreasonable and confiscatory.

Just what would be the result of applying those rates to future business upon a reasonable cost basis, or as found by the Secretary, cannot be known, because it has not yet been tried. We cannot bring to the complex conditions involved the same expert judgment as is employed by what the Supreme Court has described as "a tribunal appointed by law and informed by experience." And we are forbidden to question the soundness of the reasoning, or the wisdom of the conclusions reached, and to substitute our judgment for that of the findings and conclusions announced. I think the attack of petitioners is directed, in its last analysis, to the soundness of the conclusions reached, and I fear that we have no power to disturb them upon the showing made. Renewed application to Secretary or Court may [fol. 189] bring relief if reasonable experience, based upon the conditions imposed by the Secretary's order, is found to justify it. In this view I concur in the decision to dismiss the bills.

[File endorsement omitted.]

IN UNITED STATES DISTRICT COURT

DECREE—Filed Dec. 20, 1934

This cause came on for final hearing on the petition herein praying for a decree enjoining and restraining the defendants from enforcing an Order of the Secretary of Agriculture, dated June 14, 1933, in a proceeding pending before the Secretary of Agriculture known as "Secretary of Agriculture v. L. B. Andrews, et al., Docket No. 311",

which Order prescribed the maximum rates and charges for stockyard services rendered by petitioner and other market agencies doing business at the Kansas City Stockyards in Kansas City, Missouri. The record made at the hearings before the Secretary was received in evidence by this Court, and some additional evidence was presented by petitioner, oral arguments were made, briefs were filed and the case was fully submitted to this Court by counsel for both parties.

In accordance with the views heretofore expressed in Opinion of this Court, it is hereby

Ordered, adjudged and decreed that the petition hereinbefore filed by the petitioner be, and the same is, hereby dismissed at petitioner's cost, and that the temporary re- [fol. 190] straining order heretofore granted be, and the same is, hereby dissolved and set aside.

It is further ordered that petitioner shall, within sixty days from the date hereof, refund to the users of petitioner's services that portion of the rates and charges collected by petitioner since the 24th day of July, 1933, which is in excess of the maximum rates and charges prescribed as reasonable in the Order of the Secretary of Agriculture, dated June 14, 1933, which excess amounts have been deposited with the Clerk of this Court each week during the period since the temporary restraining order was granted, and that petitioner shall as soon as possible after the expiration of sixty days from the date of this Order file with this Court under oath a true and accurate account of the amounts so refunded, together with the names and addresses of the persons to whom refunds have been made, and also the names and addresses of persons to whom refunds are due but to whom payment has not been made, and the reasons therefor, together with a sworn statement to the effect that such account covers all the refunds which petitioner is obligated to make under the terms of this order.

Exceptions are allowed petitioner to the findings, conclusions, and decree of this Court.

Dated this 20th day of December, 1934.

Arba S. Van Valkenburgh, Circuit Judge. Albert L. Reeves, District Judge. Merrill E. Otis, District Judge.

[File endorsement omitted.]

[fol. 191] IN UNITED STATES DISTRICT COURT

PETITION FOR REHEARING—Filed Dec. 20, 1934

To the Honorable the Judges of the District Court of the United States for the Western Division of the Western District of Missouri:

Comes now the above-named plaintiff and shows to the court that he is aggrieved by the opinion and decree of the court in the above entitled cases in which the court dismissed on final hearing plaintiff's petition for a permanent injunction against an order dated June 14, 1933, issued by the Secretary of Agriculture, prescribing certain rates and charges to be observed by plaintiff in its business as a live stock market agency at Kansas City, and plaintiff respectfully requests this court to grant a rehearing for the following reasons:

I

That the opinion and decree of the court contain and are based upon novel but erroneous principles of law in that:

(a) The factors which the court, at pages 4 and 5 of the main opinion, prescribes as proper for the use of the Secretary in fixing reasonable maximum rates to be observed by all of the livestock market agencies engaged in separate and distinct business as competitors on a given market necessarily involve the elimination for rate-making purposes of all competitive costs; disregard the actual experience of these agencies in the matter of costs and expenses; and base rates entirely upon hypothetical considerations and assumed conditions contrary to the actual facts and conditions, to well-established and long-recognized rules of law in rate-making cases, and to the terms [fol. 192] and provisions of the Packers and Stockyards Act, which requires this public livestock market to be maintained as a competitive market.

II

That the court misconstrued and failed to consider the objections made by plaintiff to the findings of the Secretary involved in the present case in that:

(a) The court construed Subdivision (a) of Section VII of plaintiff's petition, and defendants' answer thereto, as presenting only the issue of whether such findings were supported by the evidence; that, on the contrary, the question there presented was whether an unreasonable, arbitrary and illegal method, as a matter of law, was employed by the Secretary in his purported findings as to reasonable functional unit costs for various functions of the business of these market agencies into which the Secretary had divided the operations of these businesses, and as to whether an unreasonable, arbitrary and illegal method was employed by the Secretary in his purported finding of total unit costs through the combining of said separate "reasonable" functional unit costs as found by the Secretary.

III

That the opinion of the court is inadequate, incomplete and too general in character in that:

(a) It does not meet the requirements of Equity Rule 70½ or of the decisions generally of the United States Supreme Court;

[fol. 193] (b) The finding of the court that there was substantial testimony "to support every challenged finding" overlooks and disregards the fact that many of the challenges as contained in plaintiff's petition were admitted expressly or in effect by the answer filed by defendants;

(c) The action of the court in adopting as its finding of facts all the findings of fact of the Secretary makes it uncertain and subject to misunderstanding as to just what the court's findings of fact were;

(d) The court discussed the issues under four major headings, but overlooked and disregarded the fact that the various subdivisions of various sections of the petition contain numerous challenges to the findings and order of the Secretary, and that, except as to the subdivisions contained in Section VII of plaintiff's petition, the court does not discuss any of the issues presented in these subdivisions and makes no findings in respect thereof;

(e) The court does not in its opinion disclose which of the issues presented and not discussed by the court are regarded by the court as immaterial and irrelevant and which are regarded as material and relevant;

(f) The court, at page 1 of the main opinion, through inadvertence states that the number of separate suits pending before this court involving the findings and order of the Secretary is 59, whereas the actual number of such suits was 50; and

(g) The court, at page 3 of the main opinion, inadver- [fol. 194] tently purports to quote for the purpose of comparison with existing rates the rates prescribed in the order of the Secretary as applying to calves, whereas the rates quoted in the opinion apply to hogs.

Wherefore, plaintiff prays the court to grant a rehearing, humbly submitting to such orders as the court may make if the application be without merit.

John B. Gage, Carson E. Cowherd, Attorneys for Plaintiff.

[File endorsement omitted.]

IN UNITED STATES DISTRICT COURT

MOTION FOR LEAVE TO FILE PETITION FOR REHEARING—Filed Dec. 27, 1934

Comes now the plaintiff in the above entitled case and prays leave of Court to file herein petition for rehearing, a copy of which petition, together with memoranda in support thereof, marked Exhibit "A", is hereto attached; that reference is hereby made to said petition for rehearing for a statement of the grounds upon which plaintiff believes that the Court should grant a rehearing herein.

Wherefore, plaintiff prays the Court for an order permitting the filing of said petition for rehearing herein, and for such general and other relief as to the Court may

seem just and proper and as the plaintiff may be entitled to herein.

John B. Gage, Carson E. Cowherd, Attorneys for plaintiff.

[File endorsement omitted.]

[fol. 194a] In United States District Court

Order Granting Leave to File Petition for Rehearing—Filed Jan. 2, 1935

On motion of plaintiff for leave to file herein a petition for rehearing, a copy of which petition, together with plaintiff's memorandum is support thereof, is attached hereto, leave is hereby granted plaintiff to file said petition.

In the meantime, and until further order of this Court, let all proceedings under the Decree in said cause be stayed.

Arba S. Van Valkenburgh, Circuit Judge. Albert L. Reeves, Merrill E. Otis, District Judges.

To the Clerk of this Court:

[fol. 195] Let the above Order be entered in identical form in each of the related cases docketed as In Equity Nos. 2329 to 2378, inclusive.

Arba S. Van Valkenburgh, Circuit Judge. Albert L. Reeves, Merrill E. Otis, District Judges.

[File endorsement omitted.]

In United States District Court

Order to Show Cause—Filed Jan. 2, 1935

On motion of plaintiff, leave having been granted by this Court to file herein a petition for rehearing, it is ordered that defendants herein show cause, if any they have, before the undersigned Judges in the District Court of the United States, for the Western District of Missouri, Western Division, in the Federal Building, at 10 o'clock

A. M., on or before the 26th day of January, 1935, why a rehearing should not be granted in said case.

Service of this Order shall be made upon defendants' attorneys either in person or at their office on or before the 16th day of January, 1935.

Arba S. Van Valkenburgh, Circuit Judge. Albert L. Reeves, Merrill E. Otis, District Judges.

To the Clerk of this Court:

Let the identical Order be entered in each of the cases docketed as In Equity Nos. 2329 to 2378, inclusive.

[fol. 196] Arba S. Van Valkenburgh, Circuit Judge. Albert L. Reeves, Merrill E. Otis, District Judges.

[File endorsement omitted.]

IN UNITED STATES DISTRICT COURT

STIPULATION AS TO CONSOLIDATION—Filed June 15, 1935

It appearing to counsel for the respective petitioners and defendants in the above entitled causes that many of the issues presented in the respective pleadings in each of said causes are common and present in each of said causes the same questions of law and fact, and that it will serve the convenience of Court and counsel if said causes be consolidated for the purpose of trial, presentation and further proceedings therein,

It is hereby stipulated and agreed by and between the parties hereto that the Court may enter a suitable order of consolidation of the said causes for the purpose of trial, presentation and further proceedings. It is understood and agreed by the parties hereto that such order of consolidation may be entered solely to serve the convenience of Court and counsel and that such order shall not prejudice in any manner the right of petitioners and each of them to several and individual presentation, consideration and determination, by any Court having occasion to pass upon the issues herein, of such of the issues in each

of said causes as are several in character and individual to each separate action.

[fol. 197] John Z. Gage, Counsel for Petitioners. Harold M. Stephens, Counsel for Respondents.

June 15, 1935.

[File endorsement omitted.]

IN UNITED STATES DISTRICT COURT

ORDER CONSOLIDATING CAUSES—Filed June 15, 1935

Pursuant to stipulation of counsel for all parties, dated June 15, 1935, which has been filed herein, it is hereby ordered that each of the causes covered by said stipulation, the same being in equity numbered 2328 to 2378 inclusive, shall be and the same hereby are consolidated for the purpose of trial presentation and all further proceedings herein.

Arba S. Van Valkenburgh, United States Circuit Judge. Albert L. Reeves, United States District Judge. Merrill E. Otis, United States District Judge.

[File endorsement omitted.]

IN UNITED STATES DISTRICT COURT

OPINION FOR PETITION FOR REHEARING—Filed June 20, 1935

VAN VALKENBURGH, Circuit Judge:

In support of the petition for rehearing counsel for petitioner urged the following criticisms of the order of [fol. 198] the Secretary of Agriculture:

1. The Secretary employed an unreasonable arbitrary and illegal method in finding total unit costs through combining separate reasonable functional unit costs; in this manner eliminating all competitive costs for rate-making purposes, in disregard of actual experience, basing rates upon hypothetical considerations and assumed conditions, contrary to the provisions of the Packers and Stockyards

Act which requires the public livestock market to be maintained as a competitive market.

2. It is necessary to consider the individual market agencies rather than to standardize all under a common mathematical rate base irrespective of such conditions as are essential to a competitive public market.

3. This results in the establishment of a monopoly of the market and stifles competition in buying and selling upon the market, tends to weaken and ultimately to destroy the market by diverting business to other more favored markets and agencies, and the undue restriction of the agencies enabled to operate profitably.

4. The Secretary's order eliminates essential competitive costs.

5. With this elimination agencies cannot compete at a profit. This is shown by a comparison with the new costs as applied to actual business operations during the test period.

6. The Tagg case does not apply to the situation here.

[fol. 199] In the Tagg case the court upheld an order of the Secretary in which he used typical experience as his guide for determining reasonable costs for rate-making purposes. Typical costs are presumably based on the actual experience of the members of the industry whose rates are under consideration. In this case the Secretary employed hypothetical costs based not upon present, but upon assumed conditions which he expects may exist at some future time. In my separate opinion, when this case was first decided, I called attention to the unfortunate method employed in fixing the salaries of salesmen and other employees. I said:

"Basing the allowance of salaries upon the potential ability of a salesman to sell a given number of carloads in a year is too restrictive. Such ability is not subject to bare mathematical measure."

Further consideration upon this petition for rehearing convinces that in the instant proceeding the Secretary has departed from the method employed in the Tagg case in the particulars pointed out by petitioner as stated above. Furthermore, I think the drastic reduction of advertising and other costs, essential to getting and main-

taining business, gives scant consideration to the reasonable necessities of the situation as disclosed by experience. I fear the effect of these methods employed may, as suggested by petitioners, tend to weaken, and ultimately to destroy, this market by diverting business to other more favored markets and agencies, and may tend further to the undue restriction of agencies enabled to operate profitably, a result injurious not only to this market, but [fol. 200] equally to the shippers of stock who would most conveniently patronize it. I find myself in full agreement with Judge Wilkerson in the case of Acker vs. United States, recently decided in the District Court for the Northern District of Illinois. He says:

"I do not concur in the findings of This Court which adopt in toto the findings of fact made by the Secretary of Agriculture. Some of them, particularly those relating to salesmanship costs and allowances for business getting and maintaining expenses, are, in my opinion, against the weight of evidence. However, I am not prepared to say that the findings were made without any evidence to support them. I join, therefore, in the entry of the decree dismissing the bill."

I am, therefore, constrained to vote to deny this petition for rehearing in the hope that a renewed application to the Secretary may bring relief if reasonable experience, based upon the conditions imposed by the Secretary's order, is found to justify it.

I fully concur in the foregoing Memorandum.

Albert L. Reeves, United States District Judge.

[File endorsement omitted.]

[fol. 201] In United States District Court

Order Denying Petitions for Rehearing and Entering Joint and Final Decree in Cases as Consolidated—Filed June 20, 1935

The petitions for rehearing, filed by plaintiffs herein by leave of Court, having been presented to the Court pursuant to the Order to Show Cause directed to the defendants herein by oral arguments and briefs of counsel for both parties, and the Court being fully advised in the premises,

It is hereby ordered and adjudged by the court, in accordance with the views expressed in the opinion of the Court, that said rehearing be not granted and the petitions for rehearing should be, and the same hereby are, denied. Exceptions are allowed to the Order of the Court denying said petitions for rehearing.

And it further appearing to the Court that by order of the Court pursuant to stipulation of counsel for all parties, the above cause and related cases bearing Docket Nos. 2329-2378, inclusive, have been consolidated for the purpose of trial, presentation and all further proceedings therein and that separate decrees entered in each of said cases as of the 20th day of December, 1934, should be set aside and withdrawn and a joint decree, in accordance with the views hertofore expressed in the opinion of the Court, be entered as of this date in the cases as consolidated in lieu of said separate decrees to constitute the finding and judgment of this Court,

It is, therefore, ordered, adjudged and decreed that the separate decrees entered in each of said cases as of the 20th day of December, 1934, be, and the same are hereby, [fol. 202] set aside and withdrawn and that the following order, judgment and decree be substituted therefor in accordance with the views expressed in the opinion of the Court:

That the petitions heretofore filed by the petitioners be, and the same are, hereby dismissed at the respective cost of each of said petitioners and that the temporary restraining orders heretofore granted be, and the same are, hereby dissolved and set aside.

It is further ordered that petitioners, and each of them, shall within sixty (60) days from the date hereof, refund, or cause to be refunded by the Clerk of this Court to the users of petitioners' services that portion of the rates and charges collected by petitioners since the 24th day of July, 1933, which is in excess of the maximum rates and charges prescribed as reasonable in the Order of the Secretary of Agriculture dated June 14, 1933, which excess amounts have been deposited with the Clerk of this Court each week during the period since the temporary restraining order was granted, and that petitioners shall as soon as possible after the expiration of sixty days from the date of this Order file with this Court under oath a true and accurate account of the amounts so refunded, together

with the names and addresses of the persons to whom refunds have been made, and also the names and addresses of persons to whom refunds are due but to whom payment has not been made, and the reasons therefore, together with a sworn statement to the effect that such account covers all the refunds which petitioners are obligated to make under the terms of this Order.

Exceptions are allowed to the findings, conclusions and [fols. 203-208] decree of this Court.

And the court being advised of the intention of the plaintiffs herein to prosecute an appeal to the Supreme Court of the United States, does, in order to avoid irreparable damage to plaintiffs, suspend and stay execution upon the judgment herein entered for a period not in excess of the time allowed by law for presenting a petition for appeal herein, upon the condition, however, that the requirement for impounding set forth in the temporary injunctions granted herein shall be complied with by plaintiffs and each of them pending the application for and the allowance of such appeal.

Dated this 20th day of June, 1935.

Arba S. Van Valkenburgh, Circuit Judge. Albert L. Reeves, District Judge. Merrill E. Otis, District Judge.

[File endorsement omitted.]

[fol. 209] In United States District Court

Petition for Appeal, Assignments of Error and Prayer for Reversal—Filed June 29, 1935

Petition for Appeal

To the Honorable Merrill E. Otis, Judge of the District Court of the United States, for the Western Division of the Western District of Missouri, the Honorable Arba S. Van Valkenburgh, Judge of the Circuit Court of the United States for the Eighth Circuit, and the Honorable Albert L. Reeves, Judge of the District Court of the United States, for the Western Division of the Western District of Missouri:

Considering themselves aggrieved by the final decree of this Court in the above entitled cases, plaintiffs, therein,

and appellants in this appeal from this decree, and each of them, hereby pray that an appeal may be allowed them, and each of them, to the Supreme Court of the United States for the reasons specified in the Assignment of Errors hereinafter set out. The cases as consolidated by order of the Court present issues in and by which the validity of a [fol. 210] final rate order of the Secretary of Agriculture of the United States, made and entered on June 14, 1933, and fixing maximum rates and charges to be charged by each of said appellants for stock yard services rendered at the Kansas City Stock Yards, Kansas City, Missouri, in connection with buying and selling livestock for others as market agencies at said stock yards, is challenged upon the ground that the rates and charges fixed by said final order as just and reasonable were, and are in fact, unjust and unreasonable rates and charges and confiscatory of the property and livelihood of each of said appellants devoted to the public service, and that said final order is arbitrary, unreasonable, illegal and void because it is in violation of the provisions of the Packers and Stockyards Act, 1921, and it violates the rights guaranteed to said appellants, and each of them, by the Fifth Amendment to the Constitution of the United States, and because it is not founded upon the evidence and disregards the evidence, and because said appellants, and each of them, have been denied the due process of law to which said appellants, and each of them, are entitled under the Fifth Amendment to the Constitution of the United States. Said appellants, and each of them, desire that said appeal shall operate as a supersedeas and state that the questions involved in said decision dismissing the petitions, and each of them, of the appellants present questions of fact and law which are novel and of far-reaching importance; that irreparable damage will result to the appellants, and each of them, pending such appeal, if the decree of this Court should be reversed on appeal by reason of inability of appellants, and [fol. 211] each of them, to recover from and of the persons receiving the excess between the rates and charges ordered by the Secretary in said order of June 10, 1933, and the rates of appellants now in force and effect, and, therefore, pray that an order may be made fixing the amount of security for costs which appellants shall give and furnish upon such appeal, and that upon giving such security and

upon the condition that during the pendency of said appeal each of the appellants shall continue to comply with the conditions upon which the restraining order and interlocutory injunction were issued herein and shall deposit and impound with the Clerk of this Court monthly, on or before the 10th day of each calendar month, a sum equal to the amount by which the amount realized by each of the appellants from such rates and charges for stock yard services as they now or may at any time prior to the final determination of these cases be charging exceeds the amount they would have received if they had rendered such services at the rates and charges provided for in the order of the Secretary of Agriculture dated June 14, 1933, said moneys, together with such moneys as are now impounded, to be held pending the further order of this Court made pursuant to the final decision of the Supreme Court of the United States, and that pending such appeal the said decree of June 17, 1935, so far as the same dissolves said injunction, shall be wholly suspended and stayed until the determination of said appeal by the Supreme Court of the United States.

[fol. 212] ASSIGNMENT OF ERRORS

1. The Court erred in holding that the order of the appellee, Secretary of Agriculture of the United States, issued June 14, 1933, which fixed and specified maximum rates to be charged and collected by each of the appellants for stock yard services as market agencies in buying and selling live stock at and upon the Kansas City public stock yards, in Kansas City, Missouri, was valid and not in violation of the Packers and Stockyards Act, 1921 (42 Stat. L. 163) although such maximum rates and charges would not produce revenue sufficient to enable the appellants, or any of them, under present conditions or conditions shown to exist by the evidence before the Secretary, to furnish efficient stock yard service as such market agencies at said public stock yards, pay the necessary and actually-incurred operating expense incident thereto, provide a fair and reasonable return upon the present fair value of the property devoted by each of the appellants to the service of the public, and furnish a reasonable compensation to the owners of any such market agencies for their personal services rendered as owners of their individual businesses.

2. The Court erred in holding that the maximum rates and charges fixed in said order of the appellee, Secretary of Agriculture of the United States, were not, as applied individually to each of the appellants in these cases, confiscatory of the property and livelihood of each of the appellants and in failing to hold that the enforcement of such [fol. 213] maximum rates and charges will not deprive each of the appellants individually of their property and of their livelihood without due process of law contrary to the Fifth Amendment to the Constitution of the United States.

3. The Court erred, in the absence of evidence and a finding of fact by the appellee, Secretary of Agriculture, that a monopoly existed at said Kansas City Stock Yards in respect to buying and selling livestock, in holding that maximum rates and charges fixed in the questioned order, determined on the basis of assumed existence of such a monopoly and the theoretical stifling of competition between appellants as market agencies in selling livestock for others, with resultant elimination of "essential competitive costs", were not unjust, unreasonable, arbitrary and in violation of the provisions of the Packers and Stockyards Act, 1921.

4. The Court erred in holding that the conclusions of the appellee Secretary of Agriculture, expressed in the order, as to the estimated amount of livestock of the different species that could be efficiently sold by an individual livestock salesman in a year, and upon the basis of which hypothetical salesmanship costs much less than the actually experienced costs were covered into the maximum rates, were supported by any credible evidence, and in failing to find that these conclusions of said appellee setting up arbitrary and hypothetical standards of performance by such salesmen were contrary to the evidence.

5. The Court erred in failing to hold that the failure of the appellee, Secretary of Agriculture of the United States, [fol. 214] to cover into the ordered maximum rates and charges amounts actually expended by the appellants, and each of them, during the test periods utilized by the Secretary and shown in evidence for traveling expenses incident to the appraisal of livestock before sale, supervision of the feeding of livestock enroute to market at feeding stations, advertising, the preparation, printing and posting of

circulars and market reports sent to stockmen, automobile maintenance and transportation and dues and assessments paid to the Kansas City Live Stock Exchange, a voluntary Association, and the making of a hypothetical or judgment allowance in lieu thereof, representing, as the majority of the members of the Court stated in the opinion of the Court upon rehearing "a drastic reduction of advertising and other costs essential to getting and maintaining business," was arbitrary and unreasonable and in excess of the power and authority of such appellee under the provisions of the Packers and Stockyards Act, 1921.

6. The Court erred in failing to hold to the unreasonable and arbitrary and to represent the application of an erroneous conception of established rules of law, the methods employed by appellee, Secretary of Agriculture, in the determination of the maximum rates and charges fixed by said order by purporting to separate the aggregate cost of service shown to have been incurred by each individual appellant into various so-called functional unit costs, excluding therefrom salesmanship and business-getting and maintaining costs and other necessary expenditures actually sustained; then improperly and incorrectly allocating [fol. 215] the remaining expenses to such functions and reassembling, on a wholly arbitrary basis, certain of such functional unit costs applying to individual appellants as representative of the reasonable cost to be covered into such maximum rates, without regard to actual experience or to aggregate expenses shown in evidence to have been sustained by any one appellant or market agency or group of appellants or market agencies, in the entire operations essential to the complete rendition of the public service required, thereby producing an alleged total reasonable unit cost non-typical in character and less than the actually-expended aggregate cost of any individual appellant or agency, or group of appellants or agencies, shown by the evidence to have been sustained in the efficient rendition of stock yard marketing service.

7. The Court erred in not holding that the action of the Secretary was arbitrary and unreasonable in refusing to give consideration to the evidence offered by appellants as to the reasonable value of the personal services of the owners of the respective businesses of appellants.

8. The Court erred in not holding the findings and order of the Appellee, Secretary of Agriculture, to be illegal and void on the ground that the Secretary employed an improper method of determining functional unit costs for those functions of the business of appellants which the Secretary purported to find that the conditions of the business tended to keep down the amount thereof, in that while the allowance made by the Secretary for these costs purports in each case to be based upon and related to the actual experience of appellants, that in truth and in fact, this is [fol. 216] not the case because the Secretary employed a method of preparing the functional cost tables upon which he relied in making said allowances of reasonable costs which under-state the actually-experienced costs of each and all of the appellants for these functions during the test years.

9. The Court erred in upholding the action of the appellee, Secretary of Agriculture, in arbitrarily ignoring or eliminating from consideration selling and buying salaries amounting to $188,346.48, yarding salaries amounting to $109,659.17, office salaries amounting to $37,848.90, business-getting and maintaining salaries amounting to $188,392.44 and non-salary expenses amounting to $150,866.23, as shown in evidence by the appellee's accounts to have been incurred by market agencies operating at the Kansas City Stock Yards during the test period of 1931.

10. The Court erred in failing to hold that the appellee, Secretary of Agriculture, did not exceed the power and authority conferred upon him by the Packers and Stockyards Act, 1921, and that the maximum rates fixed by his order were unjust, unreasonable, invalid and illegal upon the finding of the Court that the said appellee employed hypothetical costs in the formulation of such maximum rates which were less than the actual costs and which were based upon assumed conditions which the appellee expected might exist at some future time rather than upon the actual experience of the appellants, and each of them, as market agencies.

11. The Court erred in not holding that the failure of [fol. 217] the Secretary of Agriculture, an appellee herein, to find as a fact that any of the expenses actually incurred by appellants, and each of them, not covered by such ap-

pellee into the maximum rates and charges denominated as just and reasonable by the order in question, were wasteful, extravagant or unnecessarily incurred by appellants, or any of them, deprived said order of legal force and effect, and rendered it violative of the provisions of the Packers and Stockyards Act, 1921.

12. The Court erred in not holding that the maximum rates and charges prescribed by said order, non-reimbursible of actual expenses incurred by appellants, and each of them, were invalid, illegal and unlawful in that the appellee, Secretary of Agriculture, in respect to those expenses which *be* classified as among those "which the conditions of the business tend to hold down" and for which he purported to ascertain a normal or typical cost "giving due consideration to the circumstances under which each of the respondents operates," employed an arbitrary, illegal and unreasonable method of re-assembling alleged functional unit cost allowances made by him in disregard of the effect that the increased expenditure of money or effort in respect to one of such alleged functions of the business of an individual appellant might have in reducing expenditures in connection with the performance of others of such alleged functions of the business of such individual appellant or market agency.

13. The Court erred in not finding that the appellee, Secretary of Agriculture, in and by the methods of rate-making employed in the formulation of said order, unduly and illegally invaded the right of management and freedom [fol. 218] of ownership of appellants, and each of them, in the control and operation of their respective businesses devoted to the rendition of stock yard services as market agencies.

14. The Court erred in that the effect of the decree is to uphold the action of the appellee, Secretary of Agriculture, in failing to allow as a part of the reasonable operating expenses covered into such maximum rates the cost of public liability insurance and fidelity bond insurance to protect against hazards incident to the business of appellants, and each of them, although in legal effect it is admitted by the answer of the appellees herein that as to all of the original respondents in said proceeding the order in question failed to allow costs of this character aggregating

as to all of the appellants the sum of $19,918.63, as shown by the statistical cost study made by appellee's accountants, although there was no evidence and it is manifest that such cost could not have been reduced had all of the market agency business at the Kansas City public stock yards been handled by a single agency as a monopoly.

15. The Court erred in not holding as erroneous and improper the action of the Secretary in refusing to consider the evidence that co-operative market agencies operating at the Kansas City Public Stock Yards in competition with appellants were, during the periods used as test years, being financed by the United States through agencies set up by it, and that the appellee, as Secretary of Agriculture had recommended, by means of printed bulletins, that these co-operative agencies incur expenses of the classifications, kinds and character and for the purposes which the appellee [fol. 219] refused to allow as a part of the reasonable costs considered in formulating and fixing the Schedule of Maximum Rates and Charges specified in said order of June 14, 1933.

16. The Court erred in not holding to be arbitrary, capricious and violative of due process of law under the Fifth Amendment to the Constitution, the action of the appellee, Secretary of Agriculture, in causing to be introduced in evidence at the hearings held pursuant to his notice of inquiry the results of exhaustive investigations of actual costs sustained by the individual appellants during the test periods used, and in presenting, through his accountants, cost studies based upon such costs as actually sustained without apprising appellants, or any of them, of the intention of the appellee to thereafter employ methods of cost finding not dependent upon the actual expenditures made as shown by said accountants, and of basing his conclusions solely upon his own judgment as to what such expenditures should be under assumed conditions not presently existing, thereby denying to appellants the opportunity to test, explain or refute the fairness or reasonableness of such methods of rate-making or the conclusions reached by said appellee as the result thereof.

17. The Court erred in sustaining in advance of the hearing the motion of appellee to strike from the respective petitions of appellants Section 4 thereof, wherein appel-

lants alleged that they were denied a full hearing before the appellee, as Secretary of Agriculture, preceding the issu-
[fol. 220] ance of the order dated June 14, 1933, in that the Secretary unlawfully delegated the authority vested in him by said Act to conduct said hearing, consider the evidence introduced at said hearing, and in preparing said order and the findings thereof, to subordinates in the Department of Agriculture contrary to the provisions of the Packers and Stockyards Act, 1921.

18. The Court erred in failing and refusing to give appellants an independent review of both the facts and the law, which is essential to a proper judicial review of the rate order if appellants, and each of them, are to be afforded due process of law as guaranteed appellants, and each of them, by the Fifth Amendment to the Constitution of the United States.

19. The Court erred in that it failed to accord due and proper weight to the evidence before it, disregarded many of the facts established by all of such evidence and by the admissions contained in the answer of the appellees, and upheld the final order of the appellee, Secretary of Agriculture, although the conclusions and findings in said order at issue herein are unsupported by any substantial evidence and are contrary to the facts clearly established by such evidence.

20. The Court erred in that, based upon the opinions and findings of the Judges constituting a majority of the statutory Court, said orders of the appellee, as Secretary of Agriculture, should have been declared to be illegal and void under the facts as found in the opinion of the Court on petition for rehearing and the law as applicable thereto.

PRAYER FOR REVERSAL

For which errors said appellant, and each of them, pray
[fol. 221] that the said decree of the District Court for the Western Division of the Western District of Missouri, entered June 17, 1935, in the above entitled causes be reversed and that a judgment or judgments be rendered in favor of the said appellants, and each of them, and for costs.

Dated this 28th day of June, 1935.

John B. Gage, Attorney for Appellants.

[File endorsement omitted.]

In United States District Court

Order Allowing Appeal—Filed June 29, 1935

Plaintiffs in error in the above entitled cause having prayed for an allowance of appeal therein to the Supreme Court of the United States from the decree made and entered in the above entitled cause by this Court on the 17th day of June, 1935, and from each and every part thereof, and having presented and filed their petition for appeal, assignment of errors and prayer for reversal and their statement as to jurisdiction on appeal pursuant to the Statutes of the United States and the Rules of the Supreme Court of the United States in such cases made and provided, and it appearing from said petition and the record in the above entitled cause that there is drawn in question the validity of a final rate order of the Secretary of Agriculture of the United States made and entered June 14, 1933, on the ground that said order was not made in conformity to [fol. 222] the requirements of the Packers and Stockyards Act, 1921, and that the order and the findings on which the order rests are not supported by the evidence and are contrary to the evidence and are based upon erroneous principles of law, and on the further ground that the rates therein prescribed if enforced will deprive the said plaintiffs, and each of them, of their property and livelihood without due process of law in violation of their rights guaranteed to each of them under the Fifth Amendment to the Constitution of the United States, and that said order is hence illegal, unreasonable, unconditional, null and void, and it further appearing that the decision of this Court was in favor of the validity of said order and that said petition is a proper petition for the issuance of this order;

It is hereby ordered by the undersigned, Merrill E. Otis, Judge of the District Court of the United States for the Western District of Missouri, Western Division, Arba S. VanValkenburgh, Judge of the Circuit Court of the United States for the Eighth Circuit, and Albert L. Reeves, Judge of the District Court of the United States, for the Western District of Missouri, Western Division, that an appeal in the above entitled cases as provided by law be, and the same is hereby, allowed to the Supreme Court of

the United States from the District Court of the United States for the Western Division of the Western District of Missouri. And it is further ordered that the Clerk of the District Court of the United States, for the Western Division of the Western District of Missouri, shall prepare and certify the transcript of the record, proceeding and judgment in the above entitled cause and transmit the same to [fol. 223] the Supreme Court of the United States so that he shall have the same in said Court within forty (40) days from this date.

And it is further ordered that the security for costs of appeal be fixed in the sum of One Thousand Dollars.

Dated this 27th day of June, 1935.

Arba S. Van Valkenburgh, Circuit Judge. Albert L. Reeves, District Judge. Merrill E. Otis, District Judge.

[File endorsement omitted.]

IN UNITED STATES DISTRICT COURT

ORDER GRANTING APPLICATION FOR SUPERSEDEAS—Filed June 29, 1935

This matter coming on for hearing before the undersigned, Merrill E. Otis, Judge of the District Court of the United States for the Western District of Missouri, Western Division, Arba S. Van Valkenburgh, Judge of the Circuit Court of the United States for the Eighth Circuit, and Albert L. Reeves, Judge of the District Court of the United States for the Western District of Missouri, Western Division, for a supersedeas pending the determination of an appeal to the Supreme Court of the United States from a final decree rendered on June 17, 1935, by the District Court of the United States for the Western District of Missouri, Western Division; and it appearing that the plaintiffs herein have obtained an order allowing an appeal to reverse the final decree of said Court in the aforesaid actions, and [fol. 224] that a citation has been directed to the defendants, and each of them, citing and admonishing them to be and appear in the Supreme Court of the United States, at Washington, D. C., within forty (40) days from the date thereof,

and this Court being fully advised in the premises, it is by the Court found that the questions of fact and of law presented for consideration of the Court in these cases are novel and doubtful questions of fact and law of far-reaching importance inasmuch as the order of the Secretary of Agriculture, which the petitions filed herein sought to annul, involved the fixing of rates and charges for services largely personal in character and the employment of new methods and principles of rate-making, and that unless, pending said appeal, the said final decree of June 17, 1935, so far as the same dissolves the preliminary restraining order and injunction granted herein, shall be wholly suspended and stayed, this Court, from all the evidence in the case, is of the opinion that irreparable damage will result to the plaintiffs, and each of them, pending such appeal should the decree be reversed on appeal; and, therefore,

It is now hereby ordered, that pending such appeal the said decree of this Court of June 17, 1935, so far as the same dissolves the restraining order and temporary injunction issued herein, shall be, and the same is hereby, suspended and stayed until the determination of said appeal by the Supreme Court of the United States upon said plaintiffs' giving the proper security for costs as fixed and determined by this Court in the order allowing said appeal, and as a further condition of the granting of this supersedeas that during the pendency of said appeal the conditions of said temporary restraining order and temporary [fol. 225] injunction shall continue in force and effect requiring that the plaintiffs and each of them continue to deposit and impound with the Clerk of the District Court for the Western District of Missouri, Western Division, monthly, on or before the 10th day of each calendar month, a sum equal to the difference between the amount that plaintiffs, and each of them, hereafter and up to and including the time of the final determination of said cases, receive from the rates and charges for stockyard services supplied at the Kansas City Stock Yards as market agencies, and the amount that such plaintiffs, and each of them, during said time would have received if they had rendered said services at the maximum rates and charges as provided in said order of the Secretary of Agriculture dated June 14, 1933, said moneys, together with any and all other moneys heretofore deposited and impounded with said Clerk by

each of said plaintiffs pursuant to provisions and conditions under which the restraining order and temporary injunction were issued by this Court, to be held by said Clerk pending the further order of this Court made pursuant to the final decision of the Supreme Court of the United States.

Entered this — day of June, 1935.

Arba S. Van Valkenburgh, Circuit Judge. Albert L. Reeves, District Judge. Merrill E. Otis, District Judge.

[File endorsement omitted.]

[fols. 226 & 227] Bond on Appeal for $1,000.00, approved and filed June 29, 1935, omitted in printing.

[fol. 228] IN UNITED STATES DISTRICT COURT

ORDER ENLARGING TIME WITHIN WHICH TO SETTLE STATEMENT OF EVIDENCE—Filed July 30, 1935

It appearing that the record is voluminous and that additional time is necessary to afford petitioners and respondents opportunity to check the narrative and to agree to the settlement thereof:

It is ordered that the time be, and the same is hereby, enlarged to and including August 29, 1935, within which there may be prepared and presented to the Court for approval in narrative form as required by Equity Rule 75 (b), a statement or narrative, or a revised statement or narrative, of the oral testimony and such of the exhibits as are not reproduced in their entirety.

Merrill E. Otis, United States District Judge.

July 30, 1935.

All parties consent to the entry by the United States District Court of the above order July 30, 1935.

John B. Gage, For Petitioners, Plaintiffs and Appellants. Wendell Berge, For Respondents, Defendants and Appellees

[File endorsement omitted.]

[fols. 229-233] Orders extending time to Jan. 6, 1936, within which to file record on appeal are omitted in printing.

[fol. 234] IN UNITED STATES DISTRICT COURT FOR THE WESTERN DIVISION OF THE WESTERN DISTRICT OF MISSOURI

In Equity. No. 2328 (and Related Cases Numbers 2329 to 2378, Both Inclusive)

W. O. MORGAN, Doing Business as W. O. Morgan Sheep Commission Company, Petitioner,

vs.

UNITED STATES OF AMERICA and THE SECRETARY OF AGRICULTURE, Defendants.

Narrative Statement of Evidence

HEARING ON APPLICATION FOR A PERMANENT INJUNCTION

Transcript of evidence in narrative form upon the hearing of the above entitled matter on February 27, 1934, before Honorable Arba S. Van Valkenburgh, Honorable Merrill E. Otis and Honorable Albert L. Reeves, sitting as a three judge court, at Kansas City, Jackson County, Missouri.

Appearances:

For the Petitioner: Mr. John B. Gage, Mr. C. E. Cowherd.
For the Defendants: Mr. Wendell Berge, Special Assistant to the Attorney General. Mr. G. N. Dagger, Attorney for the Packers and Stockyards Division, Department of Agriculture.

[fol. 234-A] J. W. ROBERTS, of lawful age, being duly sworn as a witness on behalf of Petitioner, testified as follows, over the objection of Defendants, that the testimony did not properly relate to confiscation.

Direct examination:

"My name is J. W. Roberts and I live in Chicago, Illinois. I am a consulting accountant and have been engaged in that work 14 years. My experience as an accountant in

matters relating to cost finding has extended over a period of 35 years. The first 15 years of it was spent in the service of the Santa Fe and other trunkline railroads. The next 4 years was spent as a Grade 1 examiner and district accountant for this Western District, with headquarters in Kansas City, of the Interstate Commerce Commission Bureau of Valuation. The next 3 years were spent as general auditor of the United States Railroad Administration. Upon leaving the Administration's service, I entered business as a consulting accountant and have been so engaged up to this time. During the last 20 years my work has taken me into many fields of endeavor and a very large part of that time has been spent in cost analysis work, the design and installation of cost finding systems in various industries in practice before the Interstate Commerce Commission and other regulatory commissions relating to railroad operating cost and things of that sort, and I have handled two of these live stock commission rate cases before the Secretary of Agriculture. I was employed by the petition-[fol. 234-B] ers in connection with this proceeding when before the Secretary, known as Docket No. 311, and prepared certain of these exhibits that have been offered in evidence. I have in my possession the data from which the exhibits were prepared in connection with the application of the several different rate schedules that were considered in that proceeding. In the last rehearing the data was originally assembled in the following form:

The detailed volume of the business handled, arranged according to the brackets or classifications to which individual tariff rates would be applied, was drawn from the detailed account sales of the individual firm on to pick-off sheets. The pick-off sheets were then taken to my office in Chicago where we had an installation of punch card equipment and the information shown on these sheets was transcribed to the punch cards in order to facilitate its sorting and tabulation. The punch cards and the information abstracted from the account sales show the number of head of different classifications or different species, commissions that had been actually earned on that headage as represented by the account sales which represented the amount earned by the producers or owners of the livestock and particular care was used to refine the volume of data so it could be used in connection with the provisions of the then

Tariff No. 3. The revenue test was made of the ordered rates of the prescribed rates in Tariff No. 3 against those [fol. 234-C] then prevailing under Tariff No. 2. When the Secretary's order of June, 1933, was issued, I was requested to use the same volume of business that was handled in 1931 and which was already on our punch cards and make an application of the rates ordered in the Secretary's June, 1933, order to the same volume in order to get a true comparison of the yield of those rates if applied to the 1931 volume with the yield of Tariff No. 3 and Tariff No. 2 rates as applied to the same volume. Tariff No. 3 was not in effect at the time we made this revenue test. My recollection is it went into effect in the summer of 1932. I made an application of the tariff ordered into effect to the actual business as it was transacted by the several petitioners in the year 1931. Petitioner's Exhibit "1" which has been handed me is a summary of that result as applied to the various petitioners by firm number as those numbers are shown in the record of the hearing that has been offered in evidence.

Thereupon Petitioner's Exhibit "1" was offered in evidence.

I also made an application or a revenue test showing an analysis of the revenues as applied to actual business in 1931 by head charge brackets and extra charges under the Secretary's tariff. Petitioner's Exhibit "2" which has been handed me shows the result of my work and my application of that tariff. Dealing with actual species, this exhibit for the respective petitioner agencies shows the con- [fol. 234-D] sist of the volume as it is regarded in the tariff, that is to say, the number of calves, the number of yearlings and the number of cattle which yield head charges under the tariff. In a separate bracket it shows the revenue derived from the extra charges for which the tariff makes provision. It shows in a separate volume the revenue derived from the handling of seconds or "plants" as they are called which are the trader's volume, animals resold on the market, and then shows the total revenue from all classes of business and at the bottom of the sheet the yield of ordered rates and of the Tariff No. 3, both based on the 1933 volume as recapitulated and percentages of reduction indicated. Petitioner's Exhibit "3" which you have handed

me, is a recapitulation of the data supplied by the individual agencies from their books, indicated the selling and buying revenues respectively earned during the first 5 months of the year 1932 and the first 5 months of the year 1933, with percentages of reductions in earnings in the year 1933 for the first 5 months as compared with the preceding period. This statement reflects reduction in revenue from all costs, not merely reductions occasioned by difference in the level of rates. Part of the reduction may be due to a lesser volume, part to a difference in the consist of the volume and part in the difference of the altitude of the rates charged in the two periods. It is not prepared from the same basic data as the other exhibits you have offered in evidence. It is taken from the books of the respondent agencies. This [fol. 234-E] data was requested on a standard form supplied by the agency bookkeepers. I have critically scrutinized it and found out for myself what it represents, which is all I know about it, and this Exhibit "3" is a summary of that information. In the first 5 months of 1932, the old tariff that was in effect at the time this inquiry was started was in operation and in the first 5 months of 1933 the tariff subsequently put into effect and commonly known as Tariff No. 3 was in operation. It might be well to say in explanation of this statement that the revenues shown hereon are those revenues which result from the application of tariff rates only. In other words, no country commissions or off-market commissions or anything of that kind are included and no income derived from actual loans or things of that nature are included.

Thereupon Petitioner's Exhibits "2" and "3" was offered in evidence.

Petitioner's Exhibit "4" which you have handed me consists of two sheets and thereon is exhibited for the three species and for all species respectively the net yield of the rates prescribed in the June 1933 order to compensate the respective owners for return on their investment and for other personal services rendered to their businesses. This information is shown for each of the several firms and for the market as a whole. In that exhibit the return per owner per man day under the application of these rates to [fol. 234-F] the business of 1931 for the market as a whole, including the two cooperative agencies, is the equivalent of $.48 per man day. For the petitioners agencies only, ex-

clusive of the cooperatives, it is the equivalent of $1.33 per man day.

Thereupon Petitioner's Exhibit "4" was offered in evidence.

Petitioner's Exhibit "5" is a single sheet which relates to the 9 petitioner firms which individually handled the greatest volume of any firms on the market. These 9 firms collectively handled the equivalent of 42% of the total volume as measured by the equivalent car lot on the Kansas City market. The exhibit shows the average return per owner for 69 firms contemplating the yield at the rate prescribed in the Secretary's order based upon, first, the cost as alleged by the agencies and secondly, upon the cost as alleged by the Government's accountants. The statement is a double-barreled one. In the case of using the agencies' alleged costs as the basis for comparison, the return per owner under the rate prescribed in Tariff No. 2 would be $4,513.84 per man per annum. Under the rates presently prevailing as prescribed in Tariff No. 3, it would be $2,850.15 per annum and under the rates prescribed in the Secretary's order of June, 1933, the return would be further reduced to $1,170.23 per man per annum. Now, using the Government's own costs as found by their chief accountant, the revenues derived from Tariff No. 2 and [fol. 234-G] compared with the Government's costs would be $4,561.13 per man per annum. The revenues derived from Tariff No. 3 which is now in effect would be the equivalent of $2,897.44 per man per annum and the yield of the rates prescribed in the order of June, 1933, on that basis would be $1,217.52 per man per annum. This exhibit relates to the 9 petitioner firms, giving the firm numbers for identification as used in the hearing, that had individually the largest volume of business on the market. By "per man" I mean just the owners. There are 37 owners and joint owners of these 9 firms.

Petitioner's Exhibit "6" which you have handed me was prepared in the same form and style as Exhibit No. "5" and reflects the same character of information save that herein are embraced the 21 petitioner firms which collectively handled 72.5% of the market volume on an equivalent car lot basis. These are the firms referred to in the Secretary's order and listed in detail at Page 39 of the order.

The comparisons previously described are also reflected on this exhibit and it will be observed when the two exhibits are compared that in this case the net return per owner per annum is in both cases less for the 21 firms averaged together than for the 9 firms averaged together, which is explained by the fact that the 9 firms handled a relatively larger volume per firm than the 21 firms at a consequent lower cost.

Thereupon Petitioner's Exhibits "5" and "6" were of-
[fol. 234-H] fered in evidence.

Petitioner's Exhibit "7" which you have handed me is a one sheet statement and deals with the 59 firms on the Kansas City market. The reference to 59 petitioner firms means that these firms were in business at the time of the hearing. There are only 50 petitioners in these cases before this court and in speaking of the firms remaining, it is those who are petitioners in this case before this court. I have used the term "petitioner firm" to indicate the exclusion of the cooperative firms. The statement undertakes to compare the service costs as found by the Government accountants and as found and alleged by the agencies with the so called reasonable unit costs set forth by the Secretary in the order at Page 79 out of which he had integrated his standard costs which underlies the rates prescribed in the tariff contained in the order. The exhibit shows the costs as they relate to cattle and calves, to hogs and sheep, respectively, and then collectively for all three species and indicates the extent to which the standard costs set forth in the order are deficient to cover the actual operating costs as set forth by the Government and claimed by the agencies. At the bottom line is indicated the extent to which the so called allowed costs are deficient, being 24.2% under the Government costs as found and 31.47% under the cost alleged by the agencies. The Government accountant found an amount which he alleged to represent the invested capi-
[fol. 234-I] tal and equivalent of a 7% return on that amount but he did not include these figures in his total cost or in his total stated cost. Consequently, as may be observed from this statement, there is no return on the investment included in the Government's figures which amount to some $40,000. That element is included in the cost alleged by the agencies, however.

Thereupon Petitioner's Exhibit "7" was offered in evidence.

Petitioner's Exhibit "8" which you have handed me is a companion exhibit to Exhibit "7", being the same in all respects save that it relates to only the 9 petitioner agencies which collectively handle 42% of the total volume based on equivalent car lots. In other words, these are the 9 largest agencies on the market and presumably operate at the lowest cost efficiency. The reasonable cost so called set forth at Page 79 of the order failed to cover the actual costs of these 9 agencies as found by the Government accountants exclusive again of return on investment by 23.58% and failed to cover the cost of the same agencies as found by their accountant by 26.62%.

Petitioner's Exhibit "8" was thereupon offered in evidence.

The deficiency in the so called cost allowance as set forth in the order is occasioned in the main by two things. One of them is the reduction in the allowance of selling costs under the actual costs for selling and this Petitioner's Exhibit "9" which you have handed me bears upon the matter [fol. 234-J] of selling costs and selling performance. I think it is at least fairly comprehensive but it may be well to say that I have attempted to compare here the requirement as contemplated in the Secretary's order with the actual performance of the year 1931 for the agencies on the market as respects the selling and buying of cattle, swine and sheep respectively. On Line 11 of the statement it will be noted that the average proceeds of value of each cattle transaction was $242.78 and on Line 10 it will be noted that such a transaction, which is the average transaction, was disposed of during the year 1931 in an average of 16.900 minutes. The Secretary's requirement as to selling performance of salesmen would require that that time should be reduced from 16 minutes to 6.7 minutes. The number of head of cattle involved in the average transaction was 5.22 head. The number of men which the Secretary's order would allow to handle the sale and buying of 2,284,207 head of cattle which were marketed in 1931 was 78.77 men, whereas there were actually employed 188 men. Now the 188 men actually handled 3.73 sale transactions per hour but the Secretary's requirements would demand that

this performance be speeded up to handle 8.9 transactions, or about 2½ times as many. By "per hour", I mean per market hour. I mean active selling and buying hours. The opportunity for selling and buying is limited to the hours the market is open, of course. The market is open and active on the average of approximately 3 hours per day [fol. 234-K] for 4 days per week, or an average of 2 hours per day for a 6 day week, and the market hours were computed on that basis which I think is substantially correct. Line 6 on the statement shows with respect to cattle that there was actually sold 19.47 head per hour in 1931. I mean per man. Whereas, the requirement of the order would speed this up to 46.47 head per hour. The proceed value of the hourly transaction was actually $905.55 but under the Secretary's requirements, the hourly transaction value would be $2,161.32. The significance of the statement may be gleaned from what I have said and the same remark, with different figures, of course, apply with respect to swine and sheep. The number of salesmen actually employed in the case of swine was 50 and the Secretary's order would contemplate that 12.29 men could handle the volume. The volume was 1,045,048 head. There were 103,341 transactions handled during the year and an average of 3.31 per man hour, and under the Secretary's order 13.48 would be required. The same information is given in this exhibit as to sheep.

Thereupon Petitioner's Exhibit "9" was offered in evidence.

Exhibit "10" which you have handed me consists of 1 sheet. In connection with Exhibit "9", I said there were two things that in substantial measure explained the deficiency of the cost allowance as compared with the actual experience costs and Exhibit "9" deals with the matter of [fol. 234-L] salesmanship and this Exhibit "10" deals with the other factor which is what is commonly referred to as business getting and maintenance expense. On this Exhibit "10", which is prepared in two sections both of which appear on a single page, the top section or Section A provides an analysis of business getting and maintenance charges and Section B at the bottom of the page shows the significance of those charges. In order that this matter may be understood, may I say briefly that this business getting and maintenance expense is a classified account which

the Department of Agriculture has used in its audit and cost studies as far back as I know anything about it. That account is not partitioned by the Government accountants. Everything goes into that one account, called "B-G-&-M". When my audits were made and my costs set up, I respected that classification because to have avoided it or made any extensive refinement would only have added confusion to the picture, but I did make a subdivision of B-G & M because the account really consisted of two things. I used Element A of B-G-M account, which relates to advertising, and we may call it business getting or business maintenance, as we please, it is advertising. And Element B, as I designated it, relates to the remainder of the total expense in the B-G-M account which is not advertising, I think I may say, in any sense of the word, but is more essentially and more particularly an auxiliary selling or in cases auxiliary buying expense which is performed off the market. In [fol. 234-M] my Element B, therefore, I have included all of that expense which is not advertising but which relates to country service, the appraisal of herds, the counsel with the producers, the inspection of his feeding, and the timing of the finishing off of the cattle to hit what the commission man thinks will be a favorable market, etc., and in my treatment of the B-G-M classification expense, these two elements—A—advertising, and B—so called country trips, have been respected throughout. Now, this Exhibit "10", while in Section B it sets forth the characteristics and the details of both Element A and Element B, relates more specifically to Element A or advertising section of the expense and it will be noted that it shows the amounts allowed by the Government accountants, the amounts claimed by the agencies in respect to each subdivision of that expense. There is this important aspect of the B-G-M expense which I think should be considered, as set out in the bracket at the top of the page. The total amount of this account is $451,142.00. Now, of that amount, $249,797.00 is expense which is voluntarily incurred by the agencies. That is, they could stop that expense if they saw fit to do so. It represents cash disbursements, part of which relates to advertising and some part of which relates to the traveling and the incidental expenses of these country trips, but it is all voluntary expense. The remainder of the account, or $201,345.00 is not a voluntary expense on their

part. It is an involuntary expense and in that amount [fol. 234-N] represents merely a distribution to the B-G-M account of a proportion of the salaries of regular employees. So far as my knowledge goes, the men would need be employed whether they made country trips or not. Their time that would be otherwise idle is employed in making country trips and in doing work off the market. Some small part of the Element A expense, or advertising, also represents a proportion of time. In fact, a considerable part of it which is merely a distribution of regular salary time, and I have classified or characterized that labor expense on this statement as an involuntary expense on the part of the agencies in the sense that it could not be escaped if they desired to do so, providing they maintained the personnel which they considered essential to handling animals on the market. The advertising appropriation of this account relates to getting out market letters and advices, to advertising in the newspapers, to some limited extent, certain signs along the highway and other expenditures of analogous character which are purely advertising in their essence. Another part of it relates to the time of regular employees mailing out circulars and of salesmen writing letters to customers which deal with the handling of their transactions on the market as they occurred and that sort of thing. The advertising expense has this significance—that on the basis of the Government's and the agencies' finding, it amounted to only 40.7¢ per customer for the entire year of 1931. Entertainment of customers [fol. 234-O] was held to a very reasonable amount, only $3,095.00 having been spent for that, which is the equivalent of 1.13¢ per customer for 1931. In other words, the price of a postage stamp—not quite. The lower section of this Exhibit "10" sets out the relationship of these advertising expenses to different bases so that it may be considered what significance they really have to the customer or the man who eventually pays the freight. In my classification of voluntary advertising expenses, I included all the market letters sent out by the firms to the customers to advise them of the condition of the market. A very small portion of this is magazine advertising.

Thereupon Petitioner's Exhibit "10" was offered in evidence.

Petitioner's Exhibit "11" which you have handed me consists of three sheets and it also relates to this subject of business getting and maintenance expense, and particularly to what I have designated as Element B thereof, which concerns the country trips and service performed in the country and off the market. The first sheet of this exhibit contains two charts on which I have depicted the effect of this country expense upon the sales price per head, first of yearling cattle, and secondly, the fat or heavy cattle as disclosed by the costs which are of record in this case. The last two sheets of this exhibit are merely the details from which the graphic charts have been prepared. With respect to yearling cattle, it will be observed that as the country trip expense increased in the sense of cost per head, [fol. 234-P] the gross proceeds from the sale of yearling cattle increased in dollars per head up to the point where the expense amounted to 5¢ a head, where the sales proceeds amounted to $38.00 per head, after which the increased amount spent for country trips seemed to have no effect upon the sales proceeds per head. Now, with respect to fat cattle, the sales proceeds per head for fat or heavy cattle ranged from $37.00 per head to $69.00 per head for the year 1931. That is the average for the firms. That information is set forth in detail on Exhibit 249 of the record. Now the expenditure for country appraisal service ranged from about 1½¢ per head to as high as 10¢ per head, but as the expense increased on a headage basis as this chart shows, the price per head realized by the owner from the sale of his cattle on the market also increased. On these charts I have platted with the forked line, so to speak, the actual point experienced by the firms which fell into the different sales proceeds bracket. Then the green line is what we call the median line, or average of these points, and the red line is the trend line which indicates the tendency affecting the expense upon the sales price. The basic data from which this graphic chart is prepared is all in the record. This represents simply a compilation by me of what is already in the record.

Thereupon Petitioner's Exhibit "11" was offered in evidence.

[fol. 234-Q] Petitioner's Exhibit "12" which you have handed me is a comparison of the average costs for selling

and buying services as allowed in the order, as found by the Government accountant and as alleged by the agencies for two groups of firms, the first 9 firms in point of volume and the first 21 firms in point of volume. It is simply an assembly of those costs for convenience and comparison for the average selling and buying costs.

Thereupon Petitioner's Exhibit "12" was offered in evidence..

Petitioner's Exhibit "13" is a single sheet which deals with the confiscatory aspects of the June, 1933, ordered rates as to the 11 leading firms on the market. This includes the 9 firms we have mentioned in the other exhibits, plus the 2 large cooperative firms and also the 23 leading firms on the market which includes the 21 petitioner firms previously mentioned in the other exhibits plus the 2 large cooperative firms. This exhibit shows that considering the Government's costs set up by its chief accountant and which do not include return on investment, and considering the tested yield on the ordered rates, that after paying operating expenses there would be nothing left in the case of the 11 firms to compensate the owners and in the case of the 23 firms there would be nothing left to compensate the owners for the services rendered by them. This is predicated upon the business for the year 1931. This was the [fol. 234-R] test year for the ascertainment of the Government accountants.

Cross-examination:

In several of my exhibits I have indicated that the firms would earn less under the proposed order than their actual costs. In my compilation of those actual costs, I have included throughout an allowance for compensation to the owners that was based upon the appraisal that was made preparatory to these hearings with respect to what was designated here as agencies alleged costs. It is not true in any instance, however, with respect to the costs designated as the Government accountant's costs. In these compilations I have used both my costs and Mr. Bachman's costs. The appraisal was what these men determined the owner's compensation was reasonably worth, not what they were actually paid or actually derived from their business. The appraisal was as to the services actually ren-

dered. The valuation of that service is on an appraised basis. If I found, for instance, or allowed for a certain owner, say, $12,000.00 a year; that does not mean that under the old rate he earned that. It means that the appraisers thought that was what his services were reasonably worth. He may have earned more or he may have earned less. Whatever he did earn was disregarded.

I applied the Secretary's order to the business of 1931 as indicated by the record before the Secretary.

[fol. 234-S] Q. Now, in making that application did you apply the order in toto, that is applying the increases that were allowed as to certain items, buying charges and traders compensation or did you merely apply it in those instances where it would make decreases?

A. No, Mr. Berge, my interest in the matter was entirely professional and non-partisan. I attempted to make a fair comparison of the yield of the two schedules of rates. What I did was limited by availability of means of making the comparison. We had a complete analysis of the selling volume which of course is the predominating volume on the market. We did not have a complete analysis of the buying volume and respecting the buying volume we were placed in a rather difficult position in this respect,—first, we did not have an analysis of it which would permit of an application of the prescribed buying rates. Moreover, had we had such an analysis of the volume, the petitioners contended that the prescribed buying rates were not practical rates and they were prescribed as maximum rates and the petitioners maintained that the existing buying rates were the maximum practical rates and the same is true with respect to seconds. Consequently we took the buying volume and applied to it the prevailing buying rates and we took the seconds volume and applied to the seconds volume the prevailing seconds rates and added that to the ordered rates on the selling volume to get the total revenues.

[fol. 234-T] I did not assume in making my compilations that the increases allowed could not in fact be collected and did not have the data that would show the increases that the Secretary contemplates. It is not an exact statement to say that my application of the order to 1931 only takes into account the decreases rather than the increases which the Secretary has allowed. It does not take into consid-

eration increases, if any, in the allowed buying rate. It does not take into account increases, if any, in the allowed rates applicable to seconds traffic for the reason that the petitioners maintained that while they were maximum rates as prescribed, the present prevailing rates were maximum rates that could be charged. We did not make application of the Secretary's tariff to those consignments in which there were more than one car in any consignment belonging to more than one owner, what is commonly called plural ownership of a car. That was such a complicated matter that I did not make those qualifications purposely a moment ago to avoid confusion. There are a few consignments reaching the Kansas City market which are under Tariff No. 2 and its predecessor designated as plural ownership multiple car lot consignments. Cooperative agencies receive a number of such consignments. The old tariffs did not regard each of the car lots received in a plural ownership consignment as separate consignments which the present ordered rates do regard as separate consignments. There was no record kept of such consignments which could be readily reduced to data form. As a consequence, the [fol. 234-U] comparison of the selling rates—the comparison of the revenue which would result from application of the ordered rates is under stated to whatever slight degree, and I feel safe in saying that it would be slight, relatively slight degree, which might be affected by plural ownership multiple car lot consignments. It is true if the comparison set forth here incorporated the volume of the cooperative agencies, which it does not, which they do not include, there might be a greater under statement of the relative volume yield than there is in the exhibits as they are compiled.

Exhibit "3" as to which I testified that my information was based upon questionnaires relates not to the year 1932 and 1933 but to the first 5 months of each year. In gathering the data as to the first 5 months of the years 1932 and 1933, I submitted a questionnaire and each of the agencies made their respective replies on that questionnaire, the information being compiled presumably by their own bookkeepers, and it was submitted to me and that was all there was to it. I did not see the books. There were some discrepancies between the figures returned by the firms and those obtained by one of your accountants and I investigated those discrepancies which is the extent of my investi-

gation of those figures. I am not in a position to know positively that all of the concerns used uniform methods of taking this information from their books and that the information is strictly comparable. In making the compilation of the performance required by salesmen under [fol. 234-V] the Secretary's order, those figures were derived by dividing the total number of head received at the market by the number of head it is reasonable for salesmen to handle according to the Secretary's order, which resulted in so many men being required to handle so many head. That was approximately my calculation. The Secretary said that a salesman should sell so many cattle per man per annum. Dividing the number of head into the total number to be sold gave the equivalent number of men available to sell them. The Secretary's theory was that a salesman of cattle and calves ought to sell 29,000 head a year, and a salesman of sheep ought to sell 250,000 head a year and a salesman of hogs ought to sell 85,000 a year and only sufficient numbers of salesmen are required at the market as would be necessary to dispose of the total receipts at the market on the basis of each salesman selling that number of head. That is my understanding of the order and that seems to be the basis on which he had allowed costs out of which salaries could be paid and that is precisely the basis of my calculation as to selling. Based upon the revenue test, I took 11 firms, the 11 which were the largest and the most prosperous and I testified as to what their loss would be, operating under the Secretary's order, based upon the revenue test. In that 11, I included the 2 cooperative agencies. I do not know whether the cooperative agencies are resisting the order or whether they [fol. 234-W] are operating under it.

Redirect examination:

It is true that I had none of the detailed data which allowed the application of this rate to the strictly order buying firm or a strictly buying business. They have never been included in my studies. I don't know whether those firms are here contesting this order. As to selling firms, I do not have this data as to selling firms that also maintained a buying service along with their selling service and have not depicted it on one of these exhibits. There was no estimate made of an increase in the rates. There was an inclusion made of the revenue which would result from

selling service but the amount of revenue for selling service was based upon the presently prevailing selling or buying rates. The revenues shown here are revenues from both selling and buying service. In other words, there are no omissions or exclusions of revenue from any of my exhibits, either selling or buying, with a single exception of the plural ownership multiple car lot consignments which is an unknown quantity but from my experience of six months' studying the revenues, I am in a position to say it is a negligible figure. By "plural ownership," I mean a consignment of two or more cars, one consignment moving in two or more cars where the ownership is plural, and we all know they are very rare specimens of consignment.

Petitioner's Exhibit "13" was thereupon offered in evidence.

[fol. 234-X] The witness was then excused.

The petitioners, severally and individually, on behalf of each petitioner in each case offered in evidence the transcript of record of the hearing before the Secretary of Agriculture upon which the order referred to in the several petitions is predicated, together with the exhibits offered both by the complainant and the respondents in that proceeding. Subsequent to the hearing on the 27th and with leave of court taken at the time of the hearing, the following stipulation was filed as evidence to be considered by the court along with the other evidence in the case, to-wit:

STIPULATION AS TO COMPARISON OF GROSS INCOME FOR PERIOD OF JAN. 1 TO MAY 31, 1932 WITH SAME PERIOD FOR 1933, ETC.

"It is hereby stipulated and agreed by and between the parties hereto that the following is a true and correct statement of the comparison of gross income for the period January 1 to May 31, 1932, with the period January 1, to May 31, 1933, received by each petitioner hereto:

Commission Firms	1932 1st 5 mo.	1933 1st 5 mo.
Greer & Co.	$3,373.63	$3,677.62
Burlington L. S. Com. Co.	13,899.30	10,924.85
Leitch Sheep Com. Co.	9,872.08	8,769.36
John Clay Com. Co.	47,040.80	43,472.89
W. E. Curtis & Co.	4,297.90	4,449.85
Chas. Dixon Com. Co.	13,536.79	10,082.22
Drumm Standish Com. Co.	9,647.33	6,939.13
Elliott-Swain & Co.	5,256.95	5,191.55

Commission Firms	1932 1st 5 mo.	1933 1st 5 mo.
Ham Knighton Com. Co. (as given by bookkeeper)	2,657.29	2,937.40
K. C. Live Stock Com. Co	6,135.00	6,861.00
Kile Com. Co	9,377.85	8,692.92
Lewis-Flournoy Com. Co	3,924.45	3,503.36
[fol. 234Y]		
Walter G. Land Com. Co	$3,051.10	$2,286.75
Long-Perry Com. Co	13,589.67	11,687.65
Maxwell-Furnish Com. Co	9,700.47	9,923.97
Fred O. Morgan Sheep Com. Co	346.37	328.42
Martin-Blomquist & Lee Com. Co	39,778.91	36,190.18
National Live Stock Com. Co	30,861.73	24,666.13
Fern O. Sanders	9,618.95	4,473.46
Stagner-Pieronnet & Willis	6,460.80	5,004.52
H. Thies	6,715.10	6,651.50
Wilson-Egan & Co	23,336.13	18,011.39
Wester Bros. & Smith	9,608.96	8,800.31
Warren Cummings Com. Co	10,847.10	9,186.08
Inman-Hutton Com. Co	4,418.53	2,949.55
Crider Bros. Com. Co	18,065.23	15,458.63
Knight & Tice Sheep Com. Co	4,595.35	3,358.84
Tamblyn Com. Co	4,634.30	3,480.28
Nichols, John M. Com. Co	2,104.25	1,745.25
Gladish Live Stock Com. Co	2,889.40	2,637.95
Ehrke-Martin Com. Co	11,677.88	9,249.14
Farrar-Davis & Campbell	5,698.25	5,251.00
Laird Bros. Com. Co	9,249.88	8,045.57
Cassidy-Southwestern Com. Co	10,667.29	8,925.69
Witherspoon Com. Co	16,791.77	13,626.49
Moffett L. S. Com. Co	9,384.45	7,911.77
Ryan-Robinson Com. Co	15,417.39	13,957.82
Harry Kennaley Com. Co	25,485.41	19,839.06
Jay D. McCormick	647.25	632.62
Ragland & Storts Com. Co	8,039.23	6,963.80
Heinie Klecker Sheep Com. Co	7,749.12	1,829.38
Lee A. Cox Com. Co. (started business July 1st, 1933)		
Less White & Seamans	3,491.46	3,443.23
Swift & Henry Com. Co	45,818.05	39,582.80
Bowles L. S. Com. Co	14,649.84	12,209.77
Stuart-Robinson-Hoover	18,395.55	14,109.82
Wright & Baucus Com. Co	16,116.54	13,922.94
Haggart-Wilson Com. Co	12,459.50	11,366.90
Poole-Dempsey-Rutherford	10,773.89	8,254.90
McGrath L. S. Com. Co. (Started business) March 1st, 1933.		
Henry F. Carnes Com. Co	492.00	580.49
Welch L. S. Com. Co	624.40	730.12
Frank Standish Com. Co. (Started Business) December 1932—$349.45 (Dec. 1932—$$585.02)		
Order Buyers		
A. J. Maurer	$19,507.00	$12,946.40
Great Western	14,436.90	11,225.00
Stanley Com. Co	370.80	185.05

[fol. 234-Z] It is further stipulated and agreed that the following is a true and correct statement of the gross commission revenues in 1932 compared to 1931 with the percent of difference:

No.	Name	1931	1932 (footnote)	Per Cent of Increase	Per Cent of Decrease
1	Morgan & Co., Fred O	$3,600.28	$1,848.82		48.65
4	Ragland-Storts & Burrus Com. Co	22,336.53	20,656.90		7.52
5	Klecker Sheep Com. Hinie	17,556.01	14,248.32		18.84
6	Lewis Flourney L. S. Com. Co	11,688.49	9,655.79		17.39
7	Maxwell Com. Co., Grover C	20,078.27	25,871.13	28.85	
9	Nichols L. S. Com. Co. Jno. M	5,687.96	5,289.20		7.01
12	Bowles Livestock Com. Co	45,066.81	39,943.38		11.37
13	Crider Bros. Com. Co	47,563.60	44,653.02		7.12
14	Dixon Com. Co. Chas	32,208.87	32,765.87	1.73	
15	Elliott, Swain & Co	14,911.27	12,889.50		13.56
16	Farrar Davis & Campbell Com. Co	18,837.50	15,023.60		20.25
17	Gladish L. S. Com. Co	8,421.15	7,838.45		6.92
18	Haggarty, Wilson Com. Co	37,283.65	35,623.25		4.43
20	Kansas City L. S. Com. Co	19,581.50	18,528.85		5.38
23	Sanders Com. Co. Fern O	20,792.66	22,201.41	6.78	
26	Wester Bros. & Smith Com. Co	21,897.77	26,276.60	20.49	
29	Stagner, Pierronett & Willis Com. Co	18,286.82	19,384.09	6.00	
30	Tamblyn Com. Co	15,428.75	14,897.30		3.44
33	Carnes Com. Co. Henry F	1,522.95	1,157.15		24.02
34	Cummings Com. Co. Warren	29,041.10	27,870.87		4.03
35	Drumm-Standish Com. Co	45,007.41	32,994.25		26.69
37	Link Fashen Com. Co	1,199.90	1,539.14	28.27	
42	Long & Perry Com. Co	39,296.66	36,841.62		6.25
43	Knight & Tice Sheep Com	17,419.88	12,803.79		26.50
44	Leitch Sheep Com. Co. W. M	27,679.43	23,342.99		15.67
46	National L. S. Com. Co	91,216.54	77,895.42		14.60
48	Poole-Dempsey, Rutherford Com. Co.	27,216.03	25,613.06		5.89
51	Kennealey Com. Co. Harry	54,703.22	55,831.43	2.06	
53	Ehrke-Martin Com. Co	23,881.88	25,048.50	4.88	
54	John Clay & Co	154,137.19	126,258.07		18.09
55	Baucus & Co	40,949.18	38,638.01		5.64
59	Swift & Henry Com. Co	126,036.09	108,096.90		14.23
60	Thies & Son, H	17,078.82	15,722.47		7.94
61	Knighton Com. Co. Ham	7,718.13	6,251.94		19.00
62	Laird Bros. Com. Co	23,488.44	25,006.48	6.46	
63	Martin Bros. & Lee Com. Co	104,993.75	94,429.79		10.06
[fol. 234AB] 65	Moffett Com. Co	25,643.59	26,461.75	3.19	
66	McCormack L. S. Com. Co. Jay D	1,983.00	1,652.20		16.68
70	Kile L. S. Com. Co. W. C	26,391.90	21,226.70		19.57
71	Ryan, Robinson Com. Co	41,474.09	41,478.10		
72	Welch L. S. Com. Co	1,695.05	1,519.15		10.38
73	Witherspoon L. S. Com. Co	51,233.80	42,730.86		16.60
75	Curtis & Co., W. E	16,274.93	11,568.25		28.92
76	Greer & Co	8,097.73	8,271.53	2.10	
77	Inman Hutton Com. Co	15,927.86	10,330.08		35.14
78	Land L. S. Com. Co. Walter G	7,563.75	8,697.13	13.03	
79	White L. S. Com. Co. Less	7,446.58	8,342.36	10.74	
82	Wilson, Egan & Co	67,812.70	61,312.70		9.59
83	Burlington Com. Co	68,677.60	34,231.69		50.16
84	Cassidy Southwestern Com. Co	52,999.55	37,852.88		28.58
87	Hamer, Dave	8,883.96	11,629.93	23.61	
10	Producers Com. Assn	102,078.98	95,218.74		6.72
36	Farmers Union L. S. Com. Co	99,769.35	86,762.56		13.04
	Part Year Firms:				
11	Andrews L. S. Com. Co. L. B	1,845.15			
19	Interstate Com. Co. W. E. Burrus	8,135.30			
25	Stuart & Co., C. A	36,280.93			
52	Jefferson, Lowry, Davis Com. Co	14,781.04			
56	Robinson, Hoover Com. Co	23,193.08			
67	Peed L. S. Com. Co. W. H	2,167.55			
74	Boddington Com. Co., Frank	5,923.11			
88	Kimmons Com. Co. Ira	1,832.75			
—	Stuart, Robinson-Hoover Co		49,595.06		
	Sub-Total Part Year Firms	94,158.91	49,595.06		47.33
	Grand Total	**1,911,837.81**	**1,697,470.93**		11.21

Note: Commission revenue in 1932 hereon does not include "other" commissions in the amount of $24,093.41 reported as received; because the source of the commission was not indicated.

Note: If "other" commissions were included in 1932, the per cent of reduction would be 9.95% — — — — — — —

(Sgd.) John B. Gage, Attorney for Petitioner.
(Sgd.) Wendell Berge, Special Assistant to the Attorney General.

March 28, 1934.

This was all the testimony that was offered in the case.

[fol. 235] UNITED STATES OF AMERICA:

BEFORE THE SECRETARY OF AGRICULTURE,
BUREAU OF ANIMAL INDUSTRY

Docket No. 311

In re

SECRETARY OF AGRICULTURE,

vs.

L. B. ANDREWS, Doing Business as L. B. Andrews Livestock Commission Company, and Other Market Agencies Operating at the Kansas City Stockyards, Kansas City, Mo., Respondents

Abstract of Record

(Offered at hearing on application for a permanent injunction)

[fol. 235a] ORDER OVERRULING OBJECTION TO PROCEEDING

Upon inquiry the examiner advised counsel for respondents that this was an inquiry and not a hearing on a complaint. Whereupon counsel objected to the proceeding on the ground that it was not held before the Secretary. Counsel moved that a separate and independent hearing be afforded each of the respondents represented by him.

The objection was overruled and the motion denied.

Abstract of Evidence

Offers in Evidence

Evidence Offered by Government

Pursuant to the above order of inquiry the hearing therein specified began in the Kansas City Athletic Club, Kansas City, Mo., on December 3, 1930, before an examiner of the Department of Agriculture. The Government and those respondents not otherwise heretofore mentioned were presented by counsel.

Respondents' Tariffs

Government Ex. No. 1

The Government introduced in evidence as Government Exhibit No. 1 a compilation consisting of Kansas City Livestock Exchange Tariff No. 1 with supplements 1 to 5, inclusive, which had been superseded by the next tariff in the compilation known as Kansas City Livestock Exchange Tariff No. 2 and supplements 1 to 3 thereto.

In this compilation there were also copies of individual tariffs filed by certain ones of the respondents as supplements to Tariff No. 2 along with the statements of various respondents subscribing to Tariff No. 2. Counsel objected [fol. 236] to this exhibit on the ground that it did not contain the individual tariffs which had been filed on behalf of each of the respondents.

Government Exhibit No. 2

The Government next introduced in evidence Government Exhibit No. 2, the same being a compilation of individual tariffs filed by order buyers at the Kansas City market.

Government Exhibit No. 3

The Government next introduced in evidence Government Exhibit No. 3 which is a compilation consisting of a copy of Tariff No. 1 and supplements 1 and 2 thereto filed by the Farmers Union Livestock Commission, respondents in this proceeding.

Government Exhibit No. 4

Government Exhibit No. 4 consisted of a copy of Tariff No. 1 and supplement 1 thereto of the Producers Commission Association and Tariff No. 2 and supplements 1, 2 and 3 thereto filed by the same association.

Government Exhibit No. 5

The Government introduced Government Exhibit No. 5 containing the tariffs of the market agencies at the following markets: South St. Joseph, Mo., Denver, Colo., Wichita, Kans., Chicago, Ill., National Stock Yards, Ill., Sioux City, Ia., and Fort Worth, Texas, and a copy of Secretary's order in Docket No. 143 containing the rates and charges prescribed for the market agencies at the Omaha market. [fol. 237] Counsel for respondent objected to the introduction of this exhibit on the ground that the rates and charges at other markets had no bearing on the reasonableness of rates and charges at the Kansas City market and for the further reason that the tariffs had not been authenticated. Counsel for the Government stated that the exhibit would be reoffered after authenticated copies had been received.

Government Exhibit No. 5-A

This exhibit is a copy of the tariff of the market agencies at the Oklahoma National Stockyards. This exhibit was not offered until an authenticated copy could be received. Nature of Respondents business and character of service rendered:

Fred H. Olander was called as a witness by the Government and testified as follows:

My address is 328 Livestock Exchange Building, Kansas City, Mo. I have been engaged in the livestock commission business since 1913 with the exception of two years during which I was in the Army. My father has been in the business for over 50 years and is still an active member of the firm. The name of the firm is the National Livestock Commission Company. I am at present engaged in the selling of fat steers and am vice-president of the company. I am charged with the responsibility of some departments of the

work in the office which includes correspondence, market information and other details of the business. I have been selling fat steers since 1924. Prior to that time I was selling butcher cattle, including the stocker and feeder grades, [fol. 238] and prior to that I was engaged in selling calves. Prior to selling calves I was engaged in doing yard work and weighing cattle. Prior to that time I was running trains and receiving livestock on the chutes.

Fat steers are known in the livestock business as those cattle which are eligible to be sold in the slaughter trade. They are bought by packers and order buyers and sometimes by feeders, for finishing purposes.

There are peaks and valleys in the receipts of fat cattle at this market. Fat cattle are received during every month and week in the year. Corn fed cattle are generally marketed from the close of the pasture season, about the first of October, until the first of June. The grass-fed cattle are marketed from the first of July until the grass withers in the fall. Stockers and feeders are received every month of the year but the peak movement is in late summer and continues on into early winter. Livestock farmers throughout the country are the principal purchasers of stocker and feeder cattle. Our firm sells a rather large percentage of its stocker and feeder cattle direct to countrymen or buyers who represent countrymen. There are men known as traders who buy stocker and feeder cattle and direct them to other points for resale. There are dealers who specialize in stocker and feeder cattle and a few specialize in fat cattle. The order buyer is a man who receives orders to buy livestock for people who reside at different points through- [fol. 239] out the country. A shipper is a man who is willing to go out on the market and buy cattle, having in mind he may be able to ship these cattle to some other market or to some other point in the country and make a profit in the transaction.

As trains are pushed down the unloading tracks one of the railroad company employees ride on one of the cars carrying in his hand the waybills of the railroad company. He takes the waybills to the train office and turns them over to the employees of the stockyard company who takes the information from the bills regarding the consignee, consignor, the car number, and the kind of livestock. These sheets on which the information is copied are hung on clips against the sides of the wall in the main lobby of the train

office building. The train runners of the various commission firms come to these bills and if they have a consignment they take down the information on a book.

For the first four days of the week the train runner in our firm works from 6:00 in the morning until 5:00 or 6:00 o'clock in the evening. Some days they get away earlier. We require them to stay around in case something does turn up.

Our firm employs two train runners. The stockyard company has employees at the place between the different shipments of livestock. We have a man that goes to work at 6:00 o'clock in the evening and works somewhere from 6:00 to 8:00 the next morning receiving livestock consigned to us. He also yards for one or two other firms at night. Most of the sheep consignments are yarded at the sheep barns by em- [fol. 240] ployees of the stockyard company. The head yardman meets the train runner who is at the head of the different shipments that he is bringing over from the chutes and he takes a list of the owners' names, car numbers, chute numbers, and the number of head from the train man who has all this information in his book. Then the head yardman with his assistant yardman starts the work of feeding. They order the feed from the stockyard company who has a feed man with a horse and wagon who takes the pen numbers and puts in the number of pounds or number of bales ordered. The yardman helps to straighten the hay round.

The stockyard company usually has two men on each feed wagon. One man tosses the hay into the pens, and there is an assistant feed man who goes into the pens with a pitch fork and distributes the hay. We require our yard men to be on deck at six o'clock in the morning. After the cattle are turned over by the train runner to the head yard man and his assistant, they see to the feeding, watering, condition of the pens, and any distinguishing marks on the cattle. All of one consignor's shipment is placed in the same pen. However, it is sledom that a load of cattle will go just into one pen and not require sorting of some kind.

A straight consignment is a consignmnet of livestock [fol. 241] which comes in from one owner, and consists of one species. Consignments which we refer to as plural ownerships are those in which there are more than one owner's livestock. Mixed shipments refer to those which contain cattle and hogs, or cattle and sheep, or cattle, hogs and sheep.

The truck driver who brings livestock to the market delivers to the employee of the stockyard company a slip which contains the number of head of livestock, the owner's name, and his post office. That employee turns over one copy of that information to our yardman, who receives the livestock at the drive-in gate. He seeks the most advantageous route from the north gate to our pens, in order to facilitate the movement of the cattle from the gate to the pens. This man that brings the cattle over is similar to a train runner.

In our firm, the salesmen do practically all of the sorting. The salesman must have the services of a yardman. He places the cattle in the alley, and the yard man gets hold of the gate to the pen, and brings the cattle up the alley, one by one, past this gate, and he calls in, or by, as the case may be, with the particular animal; and, while he is doing that, another yard man has started the water in the pen, after cleaning it out, and straightened up the hay, and as these cattle are sorted into the pen they have the opportunity to fill at a water trough.

We try to employ yard men of good average intelligence, active, and possessing an instinct that is necessary to a man [fol. 242] that works in the yar-s. A yard men must know cattle, and have a knowledge of the different breeds. He must be able to distinguish an animal several hours after he has seen it. The yard man is also called on to keep the pens clean. In dry weather, this is not so much of a job, but is quite a task in wet weather. It is one of their responsibilities to keep the pens and the watering troughs clean and the hay mangers devoid of waste hay. We place manure under the mangers and off of the main floor of the pen. Later on, the stockyard company will come around with wagons and remove it altogether.

Some days we get very little livestock sold until noon. The buyers do not seem to come out as early in the morning as they did 15 or 20 years ago. In those days you could tell within a nickel or ten cents a hundred just what a load of cattle was worth. Now, we get bids that vary as much as $1.00 to $1.50 a hundred on the same cattle from two different buyers, and that has a tendency to slow up the selling of livestock. It has been increasingly difficult from year to year, from the time I started selling livestock up to the present time, to dispose of this livestock. I have an idea that perhaps it has increased competition, the draw-

ing on to our markets of buyers from a great many distant points, has tended to do that thing. It has slowed up our local packers.

As a rule there are many more buyers for butcher cattle than there are for fat steers. The number of sales in the butcher alley, as a general rule, outnumber considerably [fol. 243] the number of sales that are made in the fat steer alley. As a general rule, the clearance has been pretty well made of cattle in the commission men's hands by three o'clock. A very small per cent of it would be sold by noon.

Friday and Saturday are rather light days. The first four days of the week, beginning with Monday, are the heaviest runs. In our own case our office is open six days a week until six o'clock in the evening, and on Sundays until five o'clock in the evening. We keep two yard men at the stockyards on Sunday. There are very few Sundays in the year that the partners in my business do not spend a part of the forenoon at the stockyards, because we have customers coming in on Sundays with their livestock. Usually our office force works a half a day on Saturday.

In describing the activities of fat cattle salesmen I will use myself as the individual I am going to describe. One of the yard men calls me the first four mornings in the week at 5:15 during the fall season of the year, when, because of the greater amount of sorting and larger strings of cattle which arrive from the pastures in the fall of the year, it is necessary for us to get down earlier than usual, in order to get the sorting done in time to show it at eight o'clock in the morning when the market opens. During the winter season, when there is not the big strings of cattle, and the consignment consists more of smaller units, we generally figure on arriving at the market between ~~six and~~ seven [fol. 244] o'clock, depending on the amount of business that is in sight for that day. The yard man calls me again when he reaches the yards around six o'clock, and know what has arrived during the night. When I arrive and change my clothes, I immediately go to the bulletin board in the lobby of the Exchange Building, upon which is placed the receipts of a great many of the principal livestock markets in the country. I can tell something about the available supply on that day's market. On the previous day, I have made it a point to contact as many of the head steer

buyers for the packers as possible, and try to get from them any information which might be of value to me on the next day. They may have an inquiry for a certain class of cattle, and I get from these buyers all the information I can relative to the way the cattle that I have sold them have dressed out. After I have sized up the receipts of the different markets, I go out to the pens and I go into each pen in our alley which contains steer cattle. I look each pen over very closely. I decide whether or not that particular pen of cattle should be sorted to bring the most dollars. I look them over for weight, for quality, and I have in mind their origin. I have in mind the particular owner, and how he handles his cattle. I take into consideration the conditions as to the fat of these cattle. I look at their briskets and their loins, and I put my hands on some of them to feel the amount of fat that they carry. I take all these things into consideration in making up my mind how we are going to handle that particular load of cattle, and what I am going to ask for them. Then, I put [fol. 245] these cattle out in the alley, and sort them, as previously described. Those cattle which we do not have to sort are split into small lots of eight or nine cattle to the pen, in order to give them every chance to drink.

After I have gone through the performance of grading and sorting these cattle, and fixing them up ready to show, I will drop into the lobby of the building, and look at the eastern beef markets. We know that Boston, New York and Philadelphia are right in the center of the big consuming trade of our country. If beef is moving pretty well down there, maybe at higher prices, it is some indication to me that maybe I can get some higher prices for the live cattle that I have got to sell. I have the report of the receipts, and I also have the boys in the office get me every morning the amount of cattle that the different buyers of fat cattle have purchased the day before. I keep a check by days of the packer buyers' operations, and I will see how many they bought compared with previous days' purchases. It may show that one packer has not bought many cattle. I know that he has a plant that he must keep going, and I know that he is going to have to have livestock. So, I have a hunch that he might be a pretty good buyer the next day. I make it a point to get him when he comes out in the morning and show him my cattle.

I may have seen a number of these cattle in the country. We have many requests coming from the country, and I have gone to the owner's farm in order to counsel with him and advise him what to do. I spend a good many week-[fol. 246] ends in the country. All of the members of our firm do some appraisal work; that is, I mean they go to the country and advise with customers in regard to the handling and marketing and the present value of their livestock. I could do a lot more country traveling then I do, but it is quite expensive. We have not got enough men to put them out to make the visits that we are requested. I do not imagine that I have asked a half a dozen people in my life for a load of livestock. I have an idea that if I cannot impress myself upon the owner of the livestock by the way I work for him, and by the things I stand for, I don't think that I would gain much by asking him to ship to me. The fact that I am there would indicate to him that I would be glad to help him in the sale of his livestock.

We spend quite a little time hunting buyers. That is different on different days. There are days when there is a good active market for fat cattle and it may be that receipts are short on that day. The buyers will look you up on those days. When you have lots of them you have got to put in your time trying to get buyers. Our firm has two fat cattle salesmen, two butcher cattle salesmen, one calf salesman, two hog salesmen, and our sheep salesman is a man who has a commission business of his own. The fat cattle salesmen sell fat steers and feeders. I sell most of the fat cattle in a year's time and he will sell most of the feeders. In the butcher cattle division my brother sells the fat butcher stock and the bulls. The other butcher salesman sells the stocker and feeder female cattle.

[fol. 247] We also have one stocker and feeder salesman on steers. The fat steer salesman, other than myself, devotes his principal attention to selling those cattle that come in as stockers and feeders which are fat enough to be sold for slaughter. In a very small firm one man may sell all the cattle that he receives. In our opinion it is an advantage to our customers by reason of the fact that we have two fat steer salesmen. In the opinion of others it may not be any advantage. The volume of business in some firms might be so small as not to permit it. The purpose of having different salesmen for different grades

of cattle is to render a greater service. It is also occasioned by the buying methods of packers. Instead of weighing all the cows to one pen as they used to do, they have a number of different pens and in selling to those packers a commission firm is required to weigh these cattle to the different numbered pens. I do not know what proportion of our cattle is sold as fat steers. We contact with the buyer either by locating him in the yards or in the event he may come to our pens he will say, "I will buy certain kind of cattle." We have to know whether or not we have cattle in the alley that is the kind he wants and we will escort him to the pens, let him in and go with him. He will ride through the cattle and we will be right there by his side as he looks them over. If he decides he can use them he makes a bid which may be what you think is about the worth of the cattle and then you commence to trade with him. You try to get him to put on some more and use the best sales talk you have. You give him all the [fol. 248] information about the cattle, as to where they came from and who fed them. He may not come up to the price that we think the cattle are worth and we will let him go and then get another buyer. We go through this performance with the different buyers until we get a buyer who will pay the highest price. In the case of my firm the majority of fat steers is sold to local packers. Armour & Company have three buyers, Cudahy & Company have two buyers, Swift & Company have two buyers and Wilson & Company have three buyers for fat steers on this market.

We have the Baum Packing Company which occasionally buys fat steers. A few other small slaughterers buy a few fat steers now and then. They are on the market practically every day. There are instances on good active markets when we may trade with the first buyer on a load of cattle, but that is rather the exception than the rule. I would not hazard a guess as to the average number of buyers that I will show cattle to in a day. We have all kinds of markets to contend with in the course of a year's time. Some out-of-town packers have salaried buyers. The American Packing Company of St. Louis has one buyer on the market on salary. The local packers have other buyers for butcher cattle and for calves. According to trading customs we do not have an unlimited amount of time to

make up our minds whether or not we will accept a bid because when a buyer leaves your alley he does not have to take the cattle at the bid he placed on them. If you sell to him while he is within the confines of your alley under the trading rules he must take them. The salesman sells [fol. 249] when in his judgment he has gotten the best price. After I have sold a pen of cattle I tell my yardman that the pen of cattle weighs to such and such a buyer. When he has free access to the scales and when he can move clear up to the scale gate he opens the gate, or I may open the gate and drive the cattle out. He goes ahead of the cattle to the scales and I may follow them, somebody else may follow them or the owner may follow them. At the east end of the scales is a stockyard company employee who has charge of the gate. He will open the gate and we will push the cattle onto the scales and close the gate. Our yardman tells the stockyard man to whom the cattle are to be weighed. The stockyard company man calls through a tube to the stockyard foreman on the other side "National Livestock to so and so." Our yardman goes into the scale house and tells him who owns the livestock and to whom they are to be weighed. The weighmaster weighs the cattle, marks the weight down, and makes notations relative to who is weighing them, the buyer, the owner, the number of head and the weight. When the cattle have been counted off the scales by the stockyards-foreman he registers the number of cattle in the draft on a machine which also registers in front of the weighmaster, he records the number of head on the ticket. The weight is then stamped on the ticket. He compares the stamped weight with the written weight and, turns the ticket over to the yardman. The yardman averages the weight and writes a description of the cattle on the ticket and hands the ticket [fol. 250] to the salesman who registers the price at which he sold the cattle.

A draft is one unit of livestock which passes over the scales at one time. In the event large drafts of cattle are sold the number of cattle that can be placed on the scales determine the size of the draft. A draft consists of all cattle from a given lot belonging to one owner, sold at the same price to the same purchaser. Cattle are moved from the scales by the employees of the stockyards company to

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the receiving pens of the purchaser. Title passes to the purchaser at the scales. In the case of stocker and feeder cattle the buyer has the privilege of weighing back lumpjaws or unmerchantable cattle. He is allowed three hours from the time the livestock is delivered at his pens to inspect the cattle and weigh them back to the seller. In the case of butcher cattle which arrives at the pens of the purchaser after 3 o'clock in the afternoon he is allowed until 10 o'clock the next morning to weigh back unmerchantable livestock.

The scales are located in different parts of the yards and the stockyard company makes an allotment of the firms that are to weigh at a certain scale and also makes some allotment as to the time that will be allowed the firms and they also allot turns. For instance, there may be nine firms weighing at a scale and each of the nine firms will be given a number from 1 to 9. When the scale opens No. 1 firm can go up and weigh their allotted time. If they haven't any cattle to weigh then firm No. 2 can weigh. The time [fol. 251] allot-ed depends upon the volume of livestock that the various firms receive. After the scale ticket is returned to the salesman and the price marked it is sent to the office by the yardman or by an owner who happens to be going that way. We are anxious to return the proceeds to the shipper as quickly as possible. In our firm the ticket goes to one man who has served earlier in the day as a train runner and who upon completion of his work goes to the office for the purpose of figuring these tickets. He copies the price on the original ticket, the salesman having marked his price on the blue ticket which is a copy of the original. He separates the white tickets from the blue tickets and hands the blues to another man at the desk in the office. Each figures his ticket and puts down the amount. The man who has kept the white ticket enters the purchaser's name, date, number of head, weight, price and amount in a book. This is a bill book, the first page is a perforated bill and the second page is a blank white sheet on which a carbon copy of the information is made. The bill is torn out, attached to the ticket and both are sent to the clearing house. These tickets are coming in all afternoon and it keeps him busy billing and figuring. The clearing house is operated by the Kansas City Livestock Exchange. I am not familiar with the details of handling

those things in the clearing house. Some of the purchasers are paid in check, some of the packers pay by endorsing the original scale ticket on the back with their stamp. These [fol. 252] collections are made by the people in the clearing house. As they are made they are placed in the different boxes. Our man makes reguler trips there to collect these bills that have been paid. Bills rendered before 2 o'clock on a market day must be paid by 3:45. Bills rendered after 2 o'clock in the afternoon are paid, or can be paid, up until 10 o'clock in the next morning. On the slow markets it is not always possible to get but a small percentage of the bills in the clearing house by 2 o'clock. We do not wait until we receive the pay through the clearing house before making remittance to the shipper. We send out thousands of dollars before we have ever collected on the livestock. As nearly as possible we make all of our remittances on the same day that the livestock is sold. There are some cases that we do not get a load of livestock entirely sold the first day and have to hold it over until the second or until it can be disposed of. The shipper advises us as to the bank to which he wants the proceeds remitted. In our office the man who makes out the account sale does not make the remittances. He lists the necessary information on the account sale and passes it across the desk to another man who has the information relative to the remittances of proceeds and writes on the bottom of the account sale the bank to which the money is to be sent. He has a remittance form which he fills out with instructions on it at the direction of so and so to credit the account of so and so at such and such a bank with this amount. Then he will assemble the remittances that have to be made through one bank and will write a check covering that amount. The [fol. 253] check and those remittance slips are taken to the bank which is a local bank at the stockyards. These banks are open from 9 to 4 o'clock. The remittances are made by depositing to the credit of the shipper through the correspondent of his local bank and is made by check of the firm in the amount of those remittances. There are instances when we send a cashier's check for the proceeds. The firm check is used only in the instance of some drive-ins. We mail that direct to the owner.

We have a rule at the Exchange which forbids us sending out our own check except where it is requested by the

owner. The money received from the purchasers in payment for livestock is deposited to the credit of our firm. It is not entered in a separate account. In order to make remittances ahead of collections we try to keep some money on hand at the bank and we are very fortunate in having established credit with the bank. On days when we send out more money than is represented by our deposits in the bank an overdraft will result and we will pay interest on that overdraft at the end of the month.

I believe that I can safely say that in most consignments arriving at our market by truck there will be more than one owner's livestock contained in a truck. In my own case the majority of appraisal trips are made at the request of owners. There are certain territories which I try to visit every year. The people expect me to be there about a certain time and they do not send any letters requesting my [fol. 254] attendance. In most cases we receive requests to come out and look over the livestock. In the case of my firm we do not make it a practice to do a great deal of solicitation work. My father told me that I could never sell a head of livestock until I had served an apprenticeship and had learned it from the ground up. The different salesmen get their first contacts with the livestock in the country one way or another but it is a fact that most of the salesmen at this market have served an apprenticeship, started from the ground and built up. Yardmen grow up to be salesmen.

I was director of the exchange for several terms, and president for two terms. The exchange is a voluntary association of individuals organized not for pecuniary gain or profit, but to inculcate high standards of trading ethics, to enforce high moral conduct, to facilitate the speedy adjustment of disputes, to insure the patron of the market all the necessary safeguards around his livestock while they are in the market, and generally to look after the welfare of the man who patronizes the members of the organization. It is supported by assessments on its membership.

The membership at the present time pays into the exchange 17 cents per car. I think the exchange has some liberty bonds which furnish some income. The exchange supervises and has jurisdiction over the hog dockage system which is now in effect. There is a charge made for that service. The exchange does not supervise weighing.

[fol. 255] It operates a series of broadcasts six days in the week. The first four days of the week the broadcast consists of three market reports, at 7:15 in the morning, 10:45 in the morning, and 12:45 in the afternoon. On Friday there are two broadcasts, one at 7:15 and the other at 12:45. On Saturday there is one broadcast at 7:15. I am at the present time chairman of the radio committee, and have been since the service was instituted. It was instituted due to a desire of the membership to avail themselves of the opportunity afforded by the radio to get to the shippers to the market first-hand, up-to-the-minute information concerning the state of the market. In the early morning period, which consists of a five-minute report, the estimated receipts of five markets,—Chicago, Omaha, St. Louis, St. Joseph, and Kansas City,—are broadcast, and any information that the broadcaster may have of the prospects for that day's market, and any other high lights of the previous day's trade, which he may think will be information that the shipper in the country should have. At 10:45 the broadcast consists of a 10-minute period. A good many actual sales of cattle, hogs, and sheep are broadcast, and the eastern beef reports are given out at that time. At 12:45 more actual sales are broadcast. The owner's name, many times, the number of head in the consignment, and the average weight, and the price, are broadcast. The broadcaster gets just as many sales in as he can. He tries to get sales in that represent a good part of the territory. The information on the hog market is furnished by a repre-[fol. 256] sentative of the Bureau of Agricultural Economics. Mr. Biggerstaff, secretary of the exchange, does most of the broadcasting. He does not mention the name of the firm who sold the livestock. This broadcasting service has been in effect approximately 18 months. There is a definite charge made on the membership of the exchange on a per car basis to support this service. I think the truck-ins are reduced to a per car basis, and the assessment on truck-ins, handled in that way. I think that the charges are five cents per car. The charge for hog dockage is 20 cents per car. We have a splendid cooperation here between the Bureau of Agricultural Economics and our exchange, and they are always glad and willing to help in any way they can in getting true market reports to the country. The Market News Service of the Bureau of Agricultural Eco-

nomics maintains an office at the stockyards. I am familiar with the cattle end of their work. They have two employees who cover the cattle yards. These men get out in the morning, go over the yards, and look at the receipts. They get an idea about the percentage of fat cattle which is on the market on that day as compared with the percentage of other classes of cattle. They interview different salesmen of the different firms all through the yards, and obtain their ideas as to how the market is going to be that day, and how the buyers are bidding. They are always helpful in securing and disseminating information. This service extends to the hog yards, and the chief in charge of the office handles the market reporting in the sheep department.

[fol. 257] The Market News Service disseminates its information by the use of the mail, as well as by the use of the radio. The information that they give out consists almost entirely of reporting the general condition of the market, while the broadcasts of the exchange deal more particularly with special sales. The reason we do that is because people in the country have neighbors, and if one of those neighbors goes to the market with his livestock he will listen in to the exchange reports to find out how that neighbor's livestock sold. By comparison he can place an approximate value on the worth of the cattle that he has.

The livestock exchange has a rule which forbids its membership from sending the market paper free to their patrons. The rule became effective finally on July 1 or August 1, 1930. It was made effective on sort of a sliding-scale basis.

I am at the present time president of the National Livestock Exchange. I have been president of that organization since June, 1929. It comprises the local exchanges and their memberships on 27 markets, which are Chicago, Kansas City, Sioux City, St. Paul, Sioux Falls, Omaha, St. Joseph, Wichita, Oklahoma City, St. Louis, Indianapolis, Cincinnati, Cleveland, Buffalo, New York, New Jersey, Baltimore, Louisville, Nashville, Los Angeles, Denver, Montgomery, Milwaukee, Pittsburgh, Lancaster, Portland, and Detroit. The Kansas City Livestock Exchange makes a charge on its membership to cover matters involving the protection of shippers in their transportation rates. That [fol. 258] charge is two cents a car. The exchange, over

the course of years, has expended many thousands of dollars in intervening in those transportations cases which have a bearing upon the patrons of the market. The member firms contribute 10 cents a car to the maintenance of the exchange, and part of that 10 cents goes into what is known as an agricultural fund, and that money is used in different ways that contribute to the welfare of the stockmen in Kansas City's territory. The secretary of the exchange, and many times its president or other officers, are asked to attend special meetings of feeders' and growers' livestock conventions of feeders and growers, and we are called on many times to make these trips out into the country to participate in these different meetings. We also contribute each year prize money for boys' and girls' junior work in the 4-H Club, and the vocational agricultural programs. Some of the members of the livestock exchange are members of the livestock associations. I am a member of the Kansas Livestock Association, by reason of the fact that I am part owner of a farm in Kansas.

The exchange has for many years carried a blanket insurance policy protecting livestock during its stay on the market against fire. In 1917, there was a fire that destroyed hundreds and hundreds of cattle. The Hartford Fire Insurance Company gave a check for $1,737,000 for the cattle that were destroyed, and every man that had cattle in that fire which were destroyed was paid 100 cents on the dollar. [fol. 259] The insurance is paid by the shippers and by the buyers at the market. It is collected from the shipper by deduction on his account sale. It is seven cents a car. The buyers also remit seven cents a car.

The rules do not require every saleman to have a membership. One firm membership in the case of an individual, and, in the case of a corporation, the stockholders who participate in the conduct of the business, must have memberships. In the case of a partnership, each partner must have a membership. Employed salesmen do not necessarily have to have memberships. Some buy their memberships direct from the exchange, and others buy them from members who may have left the business, or who may have decided to quit and put their memberships on the market. To buy memberships from the exchange at the present time it costs $5,000, but memberships are sold for less than that where they have been bartered for among individuals. The

last time I heard of a membership changing hands I think it sold at $2,750. I think that was within the last 23 months.

The National Livestock Exchange is supported by assessments on the constituent member exchanges on a membership basis. That amount is $10 per head. That is paid out of the funds of the exchange. The Kansas City Livestock Exchange pays its assessments out of its general fund. No special assessments are made on members at Kansas City for the support of the National Exchange. There have been times when special assessments have been made by the National organization to defray the cost of certain [fol. 260] activities of the organization. This has been done in connection with protecting or defending a member exchange in the event of litigation, or it might be necessary in case the National Exchange intervenes in a transportation hearing. Those assessments are made on the local exchange, which determines how it will obtain the money.

The National Exchange maintains headquarters at the stockyards in Chicago, has a secretary, and a sanitary commissioner, who has charge of the program of tuberculosis eradication in the United States. It is active in all matters which affect the interests of patrons in these various markets constituting the National Livestock Exchange. Frequently, the secretary and the transportation commissioner of the exchange intervene in rate cases. The other purpose of the organization is to consider ways and means in which to be helpful to the feeder and grower of livestock. It was instrumental in winning the post mortem fight when the packers undertook to buy butcher cattle of the female species subject to post mortem examination.

The market agencies who sell livestock at the Kansas City market, and are members of the Kansas City Livestock Exchange, charge the same commission. I would not say that all who buy on commission have a uniform charge. No material change has been made in the rates contained in the Gore-Dagger arbitration. Those rates were agreeable to the members of the exchange. I do not recall any instances where a member has undertaken to charge differ- [fol. 261] ent rates. I do not believe that the exchange would take any cognizance of a member who charged rates different from the uniform rates. I believe the charging of different rates might result in a chaotic condition on the market. I do not think there ever has been on the part of

some patrons an appreciation of what real service means. There is a certain technique about the selling of livestock that passes over the attention of the patron. Salesmanship is far more than that, and the fine points of salesmanship are very elusive and they pass by the patrons' attention. If we had on our market firms which attempted to gain business by filing a lower schedule of rates, they could attract that business, but they would be doing a wrong to the people who patronize them. Thus, it would be possible for people without experience to get business by offering their services for less than the services of others. It is the job of the salesman to get the highest possible price. The price is not tagged on these livestock. The price must be determined as the result of trading between buyers and sellers, and the exercise of judgment. It has been my experience that the first bids placed on livestock are much less than I finally get for them. I may have to work all day, and I may have to work a week, and I have worked as long as a week selling one load of cattle. The commission man is interested in getting the highest possible price, and he is willing to work as long as it is necessary to do that. I believe that the average patron of the market is willing to pay a fair price for the service which he receives, and the fact that he [fol. 262] patronizes different firms indicates in his mind that there is a difference in the service rendered by the different firms.

It happens very frequently in our firm that we will carry cattle from one day to another because of the unsatisfactory nature of the price that we have been bid on them. In the case of firms like my own our only opportunity to hold our patrons is by getting results for them. We have men that we are serving today that my father served 30 odd years ago, and they have never consigned a car of livestock to any other firm.

I certainly would say that there was a difference between salesmen. If a man is not satisfied with the charge that my firm exacts he can ship to a cooperative organization, and if at the end of the year there is a surplus in the earnings of that cooperative he shares in a patronage dividend, which reduces the cost of that service to him. He has that alternative. Again, he can come in to the market and sell his own livestock without any commission charge of any kind. I would not think that that would be a wise thing

for him to do. I would not think that a man who is not on the market every day would know close to the value of his cattle. There are certain men on these different markets that I would rather pay a good many times the amount of the commission involved to sell my livestock than I would to have some other sell it. I do not know how you are going to hold the integrity and efficiency of these markets, and get the patron as high a quality of service as rules and [fol. 263] regulations and other ethics would prescribe, by making charges for these services in an un-uniform way.

I do not remember of ever having worked longer than a week in the sale of a load of cattle, but there have been frequent instances where I have worked, 2, 3, and 4 days. I do not believe that I am qualified to say whether the present tariff is reasonable. The present tariff was passed down to us, and we knew about what it would earn. After we applied it to a previous year's business, we had to cut our pattern to fit that. We had to pay certain salesmen less than we thought they were really worth, and in some instances we had to pay other employees less than we really thought they were worth. We gauge a salesman's worth by his natural ability. He must have a love for livestock. He should have had experience with livestock. I want a salesman to have a nice personality. I demand absolute honesty. I want a man also to be conscientious, and realize that his only objective is to give the shipment real service. I want him to see to it that the yard men are constantly on the alert. I want him to keep in touch with the customers, advise them, and give them the benefit of his best judgment and advice.

In determining the limit to what we can afford to pay a salesman, we know the kind of service that we want to give our patrons, just about what our revenue will be, and we take into consideration the attached business that a salesman may have. We have some salesmen that have a clientele of stockmen in the country, who consign their livestock to us because of the fact that that salesman is in [fol. 264] our employ. He has impressed them with his ability, as well as the integrity of the firm. That business that a man may have is considered in determining the salary which we pay him. A commission firm desires to make a profit on the activities of its salesmen. You cannot determine exactly the revenue that comes to a firm as the

result of the employment of any man in the organization. We try to remunerate our employees according to their worth to us and their worth to the men who patronize our organization. Of course, the owner of the organization, because of the many hazards which are in this business, is anxious to make something in the way of a surplus earning in the year's operations.

The National Livestock Commission Company has not grown in volume since I have been a member of it. There has been in fact a shrinking in volume. We have the same number of salesmen today that we had when I came with the organization. I don't hire a salesman on his ability to dispose of cattle. You can sell them at the best possible price as the result of the exercise of your judgment, and then there are salesmen who desire to just get the cattle sold. I don't hire a salesman because he may have ability to dispose of a good many cattle, but I hire him because I want him to put every ounce of his ability and every pound of his effort into each and every sale that he makes. The matter of volume that he sells does not have any bearing on his salary. The volume of his sales would not determine whether we would continue to carry him, even though we were carrying him at a loss. The factor would be [fol. 265] whether he was getting good prices. A reasonable volume for a fat steer salesman would depend on market conditions. It depends on demand and the class of livestock which he has to sell. It is impossible to say. I have never figured up how many cars I have sold in a year. I haven't any idea of the number. I could not say whether I have sold a thousand. I think I have sold more than a hundred cars in a year. I don't know whether I have sold more than 500. A salesman has no control of how the livestock comes to him. We have tried to spread out our business. Seventy-five per cent of the livestock of certain weeks arrives during the first three days. I have been a staunch advocate of a 5-day market, and I have worked with livestock associations or producers to the end of devising ways and means of effecting a more orderly distribution of the supplies to the market. It is a very difficult problem to solve. Every farmer wants to be free to use his own initiative and his own judgment in matters affecting his property. There have been times when we have prevailed on certain shippers to stay away

from a particular day's market, and whenever the market gets bad I may use the telephone a good part of the day, or the telegraph company, to tell people that I don't believe they ought to have their livestock here the next day or the day after that. In fact, we have customers in our firm who will not ship until we tell them to. They put in our hands that responsibility. We may tell them that things look good, and to be there the next day, and then somethings turns up that we get a slow dull market. That may [fol. 266] make the customer feel bad towards you, because he feels that you should know that.

The number of cattle handled by a salesman varies depending upon the class of receipts. There will be days when we will have a small number of fat steers, but quite a number of butcher cattle or calves. Some days we can take care of all the fat steers that come to our firm. On other days we do not sell on the day of arrival the cattle or part of the cattle that are consigned to us. We carry them over sometimes at the request of the owner. They may not fill and he wants them carried over. We dispose of most of the fat steers that come to our firm. There are instances when we may work cattle for two or three days and not get a satisfactory price and then the owner may ship them on to Chicago. If our volume of fat steers double we might not be able to take care of them. If we had control over an additional amount of business and got them in on days toward the close of the week we could handle more but there are days when we are taxed to handle what we have. I would not want to say that we could have handled more last year if the business had come in just as it did.

I don't want the farmer stockmen to pay any more for these services than they are worth to him. In my opinion they are tremendously valuable. I think a patron puts the service above the price.

It is my own opinion that advertising does not get business. In my own firm we do some advertising and it is for [fol. 267] the reason that I don't think it produces results that we don't spend more. By advertising I mean paid advertising in newspapers and magazines. We carry an ad in the Kansas Stockman largely because we want to help the association. Once a week we carry an ad. in the Kansas City Star in a column that is devoted to livestock interest at this market. In our market paper we have carried a few ads. Our advertising is usually for special occasions.

I do not know whether you would call our market reports advertising. This is a two page leaflet on the first page of which is information relative to the market for the first four days of the week and on the second, third and fourth pages we carry items of information to farmers and stockmen. We carry a report from now and then on the meat storage situation. We carry articles prepared by agricultural colleges and by the Department of Agriculture on the cattle situation, how to feed lambs and other bits of information. We set out under the column entitled "National Family News" information in regard to the sales and purchases we have made during the week. We have inquiries from county agents, bankers and vocational teachers for this information. We do not budget the expense for advertising. We do not budget any of our expenses. The expense for advertising is determined solely by what in my opinion appears to be consistent with the operation of our business.

The expense for telephone and telegraph service is subject to certain limitations imposed by rules of the Exchange. When a man ships us a load of livestock and does not ac- [fol. 268] company the shipment we will either telephone him or telegraph to him the information concerning the sale. If we have a customer who is a prospective purchaser of livestock we can either telephone or telegraph him at our expense advising him of a favorable time to buy. The telegrams and telephone messages carrying information as to sales and purchases made are sent at our expenses. We can also pay the cost of transmission of the telephone or telegraph message where we desire information from certain people. We can also pay the cost of messages sent by patrons announcing that a shipment will arrive. We cannot wire or telephone a customer at our expense telling him to ship his livestock. We use the telephone and telegraph for the purpose of obtaining market information from other markets.

The Kansas City Livestock Exchange has certain restrictions and qualifications which they require of their membership. The Board of Directors put the qualifications high enough so that only those who are qualified to go in business are admitted. There have been instances where men have been forced out of the Exchange and have been re-registered and allowed to continue in business at the

yards; not as members of the Exchange. There is no numerical limit on exchange members. It is smaller than it has been in a number of years.

There is a difference between the different markets in a good many different ways. The character of the lay out of the market enters into the cost of operating and many other things will come in to consideration which characterize the different markets. I have never known in my experience a man shipping to one market as against the other [fol. 269] because of any difference in the commission charges. He selects his market with a view as to where he can expect to receive the best price for his livestock. It is my opinion that the rates at Omaha are lower than our present rates. We do not handle enough business from the territory which is competitive as between Kansas City and Omaha to know whether the lower tariff at Omaha has caused any change in the flow of livestock as between Omaha and Kansas City. The Omaha market has shown an increased volume in their hog receipts and I understand that has been mainly because of the elimination of direct buying by packers of hogs in Nebraska.

Cross-examination:

The percentage of commission received by those doing business at this market to the gross valuation of the livestock handled represents .85 of one per cent. A graph has been developed from the figures received from the Packers and Stockyards Division showing the relative percentage borne by gross commissions, to gross sales, and purchases, during the years which the present tariff has been in operation.

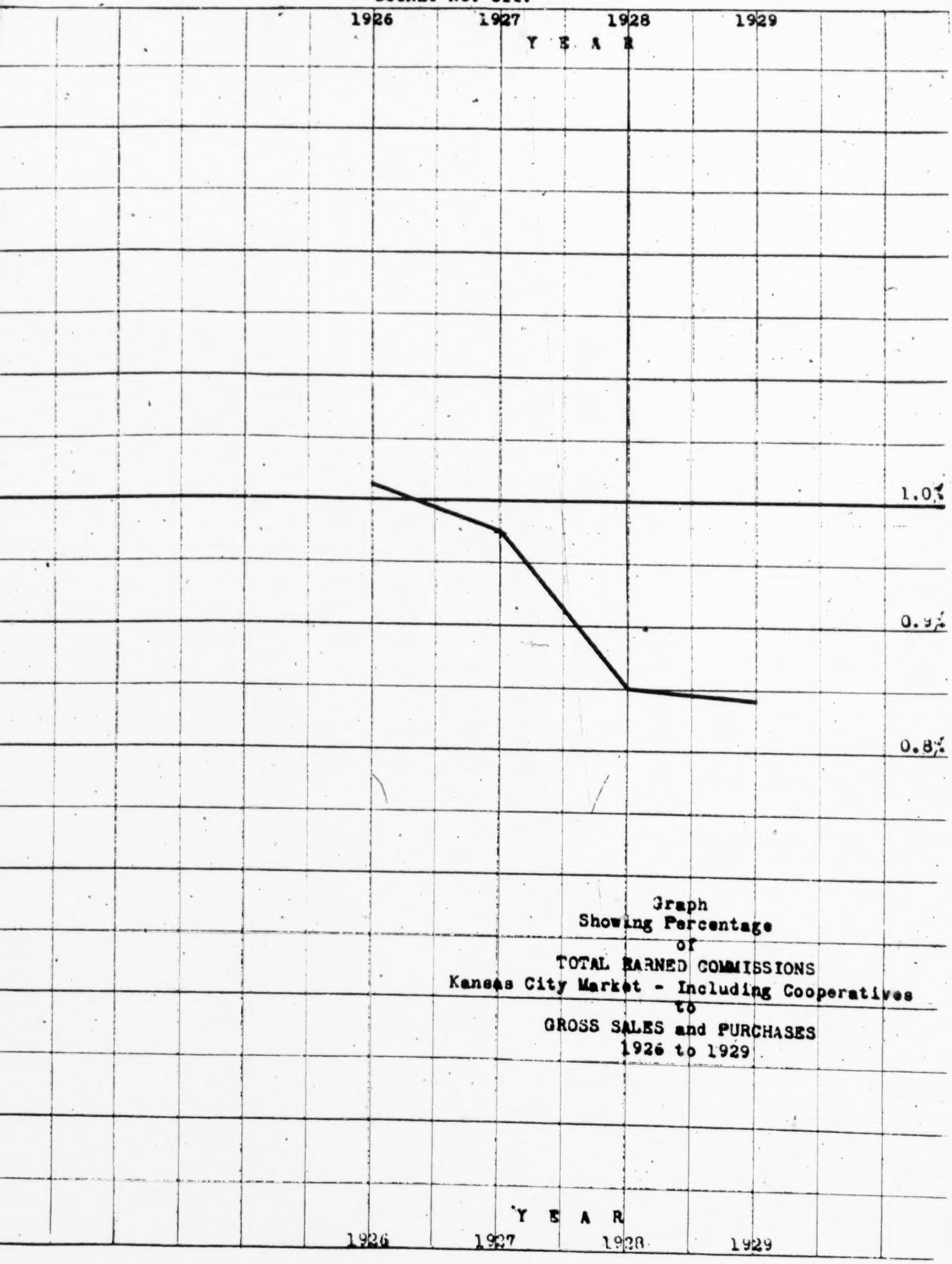
Respondents' Exhibit No. 1

This exhibit consisting of two sheets was received in evidence.

(Here follow 2 photos, folios 270 and 271.)

BEFORE THE SECRETARY OF AGRICULTURE
BUREAU OF ANIMAL INDUSTRY
DOCKET NO. 311.

Exhibit A 1
a



Graph
Showing Percentage
of
TOTAL EARNED COMMISSIONS
Kansas City Market - Including Cooperatives
to
GROSS SALES and PURCHASES
1926 to 1929

Respondents' Exhibit No. 1

2224

BEFORE THE SECRETARY OF AGRICULTURE
BUREAU OF ANIMAL INDUSTRY
DOCKET NO. 311.

Exhibit A 1 b

RATIO OF EARNED COMMISSIONS

to

GROSS AMOUNT OF SALES AND PURCHASES

KANSAS CITY MARKET - INCLUDING COOPERATIVES

1929

Year	Gross Amount of Sales & Purchases	Commissions Earned on Sales & Purchases	Ratio of Commissions to Sales & Purchases
a	o	c	d
1926	$239 834 931	$2 696 442	1.0110 %
1927	236 500 761	2 306 016	0.9751 %
1928	281 158 876	2 389 001	0.8497 %
1929	275 163 457	2 313 443	0.8407 %

[fol. 272] At the inception of the present schedule the gross commissions bore a relationship slightly in excess of one per cent to gross sales and purchases. This percentage has been constantly declining until the end of the year 1929. I have not noticed any relative increase in volume of business at the Kansas City market as compared with other markets during the period in which the graph reveals that this percentage was declining. I understand that there has been a steadily increasing volume of drive-in receipts on the Omaha market. I understand that the Omaha tariff is higher than the Kansas City tariff and I understand that a relatively larger percentage of hogs within the truck radius of Omaha is now reaching that market under the higher tariff than formerly existed, as compared with the percentage of the number of hogs or other livestock within that radius, that reached the market under the lower tariff. Differences in the amount of commission charges do not affect the relative movement of livestock for the reason that the owner of the livestock is seeking the market that will provide the highest price for his livestock and the market that will be most economical for him to ship to from the standpoint of transportation costs. The transportation costs are a much larger factor in his total costs than the commission charges. In the matter of the movement of livestock from the unloading chutes where trucks are received the distance is greater in the instance of many organizations operating at Kansas City than it is at some other [fol. 273] markets. The unloading chutes where drive-in cattle are received are at the extreme north end of the stockyards area in which cattle are handled and there are firms located at the extreme south end of the yard that receive drive-in cattle and calves that require a drive of half a mile or more. This condition is dissimilar from the condition that exists at some of the other markets where drive-in livestock is sold adjacent and contiguous to the unloading chutes. At some other stockyards the stockyard company employees deliver the livestock to the commission firms. On account of the vast territory from which the Kansas City market receives livestock a salesman must have a more extensive knowledge of the different classes of cattle which originate in these various states. In my opinion there are more different classes of livestock received here than at any other market in the United States. The salesman must know the characteristics and types of the different classes

of livestock. I think the buyers for killers will tell you that the Kansas City market is the most difficult market in the United States upon which to buy killing cattle for the reason that we have so many different kinds of cattle coming here and these cattle are fed every known feed under the sun. We have pulp fed cattle, grass and grain fed cattle, grain fed cattle, grass fed cattle fed on grass with a little cake, cattle from the oil mills that are fed on cotton seed meals and hulls, barley-fed cattle and wheat-fed cattle. It requires expert judgment and even the most expert will make a [fol. 274] mistake once in a while. The salesman keeps in touch with his patron and may go out to his feed lot and see how he is feeding his cattle. This gives him quite an advantage over the buyer. If he makes you a pretty go-d bid on a bunch of cattle you are going to let him have them and then he tells you about it later.

Some packers require their buyers to go into the coolers and look over the beef that they have purchased on the day before. That is quite an advantage to them in that respect. I have had the opportunity to visit the coolers of the packers and look over the different grades of beef. The buyer studies the dressing percentages of the livestock which he has purchased. The different methods of finishing or feeding cattle will produce different market values. These differences are very difficult to detect. Cattle of generally the same appearance as to breed, age and weight have a wider range of value at this market than is customarily true of the run of receipts on other markets. It is quite essential that the salesmen on this market have knowledge of the way cattle have been handled. The buyer takes into consideration both the quality and the dressing percentage as well as the demand for the particular class of livestock. There must be a certain specializing because that benefits the owner. If one salesman had to sell all these different classes it would be much harder for him to specialize in his judgment on the respective merits of the different classes.

[fol. 275] It is very essential that a salesman know something of the actual conditions under which these livestock are grown and produced. If all of the receipts of livestock coming to my firm come out of Kansas and Missouri rather than out of 10 or 12 states it would be much less expensive for me to carry on the business but because of the fact that our services are requested by owners of livestock at points in Texas and other points further away from the market

than either Kansas or Missouri it is quite plain to us that it would be less expensive for my organization. We have no control over that. We keep in contact with men in states as far East as Ohio and the men in the south of Texas and with men on the western slope of Colorado and with men in Iowa.

Slaughter cattle are purchased on this market by buyers located as far east as the eastern seaboard, as far north as Michigan and as far south as Texas, and by buyers to the west of us. The demand is diversified. It is not unusual on a market day for buyers to purchase slaughter cattle and ship them into as many as 20 states. Some cattle have moved west but I do not know how far. That market is best in my opinion which has the greatest demand centered in it.

The Livestock Exchange uses its funds to gain contacts and to make trips from the market to packers located all over the country with the idea of telling those who have never used the Kansas City market of its advantages. The Kansas City Stockyards Company sends representatives [fol. 276] into that territory several time- a year with the idea of trying to interest new orders in coming here. The market would slowly die if you did not keep maintaining these contacts and trying to get new demands. The Kansas City market stands at the gate-way between the great producing areas of the south and southwest and west and the corn belt and feed lots of the east and north and west.

The Kansas City market is the first market in the United States in receipt of stocker and feeder cattle. They are as variable in breeds, origins, weights, ages, quality and condition of flesh as the shades of color. After purchase they go north, east, south and west of Kansas City. They have gone as far east as Pennsylvania.

The Kansas City Livestock Exchange has contacts with radio broadcasting station- situated at several different points throughout the great corn belt or feeding district of this country and it furnishes market reports concerning the trade in stockers and feeders to these stations which are broadcasting daily during the seasons when we have big supply of stockers and feeders at the market. The list of patrons whom we keep in touch with at the market is practically as large among those who buy cattle on this market as those who sell cattle. You never saw a good

auction sale where there was just one buyer. The more buyers you draw on the market the better your market. The volume of stockers and feeders at the Kansas City market do materially constitute the peak movements at the market. Climatic conditions and all of these things enter [fol. 277] into the matter of when livestock comes to market. The personnel of a firm must be trained. They must have knowledge of operations on the stockyards if they are going to fit in an organization and render good service. You cannot put a man in the market down there and put him right to selling cattle unless he has had some experience some place else. That is one thing that furnishes a real problem to firms that have a seasonal business. They want to have their forces during the season that they do have the big peak of their business and they want that force trained and capable of handling these big loads. In order to render good service they will want to keep them the year round. I certainly make an effort to operate our business as economically as I can with the assistance of my partners. The greater the territory, the greater the expense.

Direct buying is the acquiring of livestock in the country and away from the markets. As applied to hogs, it means the acquiring by packers of hogs direct in the country. It has a real effect of reducing the volume. That is one of the real problems we are up against here at Kansas City, right in the heart of this direct buying movement, with practically all of the big four packers engaged in it. Our market receipts of hogs are falling off from year to year.

I do not know of any other market, with the exception of St. Louis, where the direct buying of local packers is relatively as large as at Kansas City. The packer who receives hogs direct can get in telephonic communication [fol. 278] with his buyers in the country in a very short time. If he does not want hogs, they ship on the open market. When the packer gets in that sort of a situation, and they throw those hogs on the market, which would ordinarily go to him, it is just too bad. We try to keep ourselves prepared to handle the peak whenever it comes.

Respondents' Exhibit No. 2

Respondents' Exhibit No. 2 is a copy of the report of the Committee on Agriculture and Forestry of the United

States Senate, in Calendar No. 1272. This exhibit was received in evidence.

The relative volume of this direct buying of hogs by private stockyard operators and others, as compared with market receipts of hogs at this market, has greatly increased within the last 10 or 15 years. In my judgment, it is not influenced by the amount of commissions paid for sales on the open market. I have the opinion that the movement was instituted to hold down the price of live hogs on the market, and probably to maintain shipping differentials between St. Louis, Chicago, and Kansas City, as against an increasing Western competition for hog products. It is generally understood that the Kansas City prices, as established on the open, competitive market, through sales made by market agencies, and purchases made by order buyers, is the price basis used by the packers in making their direct purchases in the country. The packer buyer, who marks the price on the hogs received direct, comes to the open, public market, and gets the different prices prevailing on the open market, and marks [fol. 279] the hogs in his private pens on the basis of the prices paid on the open market.

The existence of the Kansas City central, competitive, public livestock market does not place any impediment in the way of growers and producers of stocker and feeder cattle with respect to the direct sale of such classes of cattle to the feeders and finishers. We have been of assistance in many instances in helping our customers buy cattle in the country. There is no requirement of law or practice that compels the movement of cattle through the Kansas City market. The owner can dispose of them in the country or on the market, as he pleases.

The competition existing between market agencies at the Kansas City market is very keen, and every firm is on its toes trying to make sales that will impress another fellow, and perhaps gain that other fellow's patronage by the merits of the particular work that he does. The exchange, through one of its rules, places limitations on the amount of time that a member can spend in the country or away from the market on business. The purposes of that particular rule are to limit the expense of members' operations in the country. Furthermore, he is required to spend 15 days of each calendar month on the market, for the purpose

of keeping himself informed. We do not like to have men going out into the country appraising a farmer's livestock who do not have a contact with the market. That rule applies to all those who are interested as owners in the various organizations which may happen to be members of the Kansas City Livestock Exchange.

[fol. 280] The cooperative commission agency has an advantage over the socalled old-line market agencies, in that their members who ship to their firm or to the market, in many instances, are solicitors for the firm, for the reason that as they increase the volume of the cooperative's business at the market it also has a tendency to increase the patronage dividend that may be available. There is no limitation on their solicitation of additional memberships or business in the country. The present rule has been in existence for a great many years. If there is any surplus in the accounts of the cooperative organizations, they refund patronage dividends. The stockman who patronizes the market has the privile[illegible] atronizing whatever concern he sees fit. Whether it be cooperative or old-line agency, or sale by himself.

There is a great amount of competition existing between markets, and it seems to be increasing all the time. As I go about the country, it seems to me that I find more men present in the different territories that I visit, from other markets, than I used to years ago. I am told that some of the other markets competitive to Kansas City have extended their rules in regard to members going out to the country. I do not know of any business that is any more competitive than this business in which I engaged.

We have at this market what is known as the "Market Practice Agreement," which is an agreement entered into between the Kansas City Livestock Exchange and two other subscribers, which are cooperative agencies at this [fol. 281] market, and by subscribing to the terms of this agreement they can avail themselves of the functions of the clearing house and of the facilities of the hog dockage system. The expense of these facilities to the subscribers to this trade practice agreement is the same as for members of the Kansas City Livestock Exchange. Any market agency under those conditions can be a subscriber to that agreement.

Respondents' Exhibit No. 3

This exhibit, which is a copy of the market practice agreement, was received in evidence.

The Kansas City Livestock Exchange maintains the clearing house, and supervises and maintains the hog inspection service. Some years ago the only parties who could avail themselves of those services were members of the livestock exchange. From the viewpoint of the cooperatives, it was desirable that they have access to those services, and they also complained that they were not being traded with freely by certain members of the exchange. A complaint was filed, and a hearing was held. About that time the exchange expelled Dell W. Hubbard from membership because of a shortage in his accounts. Even though he made up the shortage, we did not consider that a man who would use proceeds belonging to his shippers was a fit member to be on the market. A few days later he registered as owner of the United Livestock Shippers Association, which he tried to conduct along cooperative lines. He also was one of the complainants in the complaint I mentioned a few minutes ago.

Market agencies at the stockyards have a greater security [fol. 282] when dealing with members who are under certain rules and regulations and are under bond to the clearing house to pay their bills promptly. We have a great responsibility to our customers to remit to them the proceeds of this livestock, and we want to have the best assurance that we can that we are going to get paid for what livestock we sell.

Under the rules of the exchange, the creditor holding a market obligation has a first lien and preference ahead of all other creditors with respect to the value of the exchange memberships held in the firm or by the membership of the firm which defaults in the payment of market obligations. During the course of the hearing held before the then Secretary of Agriculture with respect to this demand of these non-member firms, this statement of rules and regulations was developed, as shown in Respondents' Exhibit No. 3. One of the provisions of this agreement is that in addition to obedience to established market rules, there would be established through a deposit of securities acceptable to the committee a guaranty that would be approximately equiva-

lent to the value of the exchange memberships. The Farmers Union Livestock Commission Company withdrew from the complaint before the hearing was concluded, and accepted this arrangement. It has operated under it since. The Secretary of Agriculture issued an order after the hearing which was reviewed by the court. The effect of the modified order of the Secretary of Agriculture was to require the exchange and its membership to admit any registered market agency to the use of its facilities on the same [fol. 283] terms in effect as those facilities were used by those firms holding memberships in the exchange, this permission to be conditioned on the deposit of guaranties substantially equivalent to those given in the form of exchange memberships and agreements to abide by the trading rules recited in the rules and regulations of the exchange, which were outlined in Respondents' Exhibit No. 3. The United Livestock Shippers Association did not qualify under that agreement.

The situation in regard to the entrance of new organizations in the business since the decree of the court, and after the formulation and adoption of this market practice agreement, has been that any market agency, registration of which is accepted by the Secretary of Agriculture, can, through entering into this market practice agreement, and binding itself to follow the usual and ordinary rules of trading, and depositing the guaranties required by that agreement, and giving the bond required by the Secretary, do business on that market.

(In response to a question by counsel for respondents, counsel for Government stated that for the purpose of this proceeding it would be admitted that while, in his opinion, the Kansas City Livestock Exchange probably has power and authority to limit its own membership as it sees fit, it has no power or authority by any lawful means to limit the number of people who may do business on the Kansas City stockyards as market agencies or dealers.")

There has been a considerable reduction in the number of [fol. 284] memberships since the time when I was last a member of the board of directors. I do not know of any way in which the exchange or the respondents could lawfully limit the number of market agencies operating on the Kansas City market.

In recent years we have had increased competition from agencies that have been set up in the market. We have a great competition at the present time from a competitor that is subsidized. We have this new competitor in front of us, which has the advantage of Government funds, and the advantage of having a publishing company which publishes information in the interest of that particular organization. We have on our one flank direct buying, which is continually cutting down the volume of livestock received at the markets. Then we have had competition in recent years from county agents who have employed themselves in soliciting and obtaining customers for these cooperative competitors. This new competition has made the maintaining of our business increasingly difficult, and has increased expenses in my organization, by reason of the fact that loans have been made by at least one of these cooperative organizations, and the fact that my own organization makes practically no loans. I refer to the National Livestock Publishing Company, which is a subsidiary of the National Livestock Marketing Association, capitalized by the Federal Farm Board. It is my understanding that through Government aid it has been established with a capital stock of $110,000. It is my understanding that the publication goes out free of subscription price to the patrons of the particular market [fol. 285] agency.

I know that money is expended by that organization in setting up outdoor advertising signs along the highways through a part of the territory of this market. I was approached by a representative of an outdoor advertising concern, and was offered a contract that would place the National Livestock Commission Company's signboards in front of different farm homes. I think the price was 40 cents a sign per year. The agency which I refer to, the Producers Commission Association, has these signs on many highways radiating from this market. I have second-hand information to the effect that the Producers Commission Association had accumulated a deficit prior to the year 1929.

I have attended a national meeting of the National Chamber of Commerce, and am familiar with a certain letter written by the chairman of the Federal Farm Board, Mr. Legge, to Mr. William Butterworth, president of that organization.

Respondents' Exhibit No. 4

After reading a portion of this letter, the letter was received in evidence.

My information is that Mr. C. B. Denman is a member of the Farm Board, assigned to the marketing of livestock. I am personally acquainted with him, and have heard him on several occasions express his ideas with regard to the marketing of livestock. I heard him make the statement that he thought there was too much competition on the selling side in the public market. He and I do not agree on that [fol. 286] point. His idea is that there should be only one cooperative selling agency on a public market, and carrying out his idea that there is too much competition among sellers it is his idea that the number of market agencies engaged in the handling of livestock should be reduced. It has always been my opinion that where you remove competition on the selling side you will eventually remove competition on the buying side. These markets were established on the basis of both competitive buying and selling. If the selling were made non-competitive, I believe that the buying of livestock would also become non-competitive. Under such a situation it is my opinion that the buyer would have the advantage, for the reason that livestock is a perishable commodity, and it would be quite unnatural if the buyer, appreciating that fact, did not take advantage of the situation. By withholding his purchases, the single buyer could name his own price, as the situation would result in the disintegration of the market. I cannot see where there would be any place in the picture for an organization such as I represent. I think the effect has been indicated already in my own business in the loss of some customers that I had served prior to the time the Federal Farm Board came into existence and adopted the policy which they now have in effect with reference to livestock.

If the Department of Agriculture should cut down my income and exclude from revenues the funds necessary to counteract the use of these Government subsidies, the business would be more difficult to maintain. Some persons who had been our customers are now utilizing them. We have [fol. 287] no control over where a man can ship his livestock. The biggest gun we have in our battle to maintain the patronage is the gun of real efficient service, and one that will impress its value on the man who receives it.

For eleven months, this year, our standing among all the firms at the market is one firm better than it was the previous year. Our 1929 business was less than our 1928 business and our business for eleven months of 1930 shows a decreased volume under eleven months in 1929. The big bulk of the shrinkage was caused by the loss of a few customers who handle a large volume of business. We failed to receive the business from these parties this year by reason of the fact that they shipped the bulk of their cattle to the St. Louis market. The main reason they went to St. Louis was that they thought that they could get a better price. I think the owner of livestock pays quite a little attention to transportation costs in determining a particular market that he would patronize. The development of competitive livestock markets at point such as Wichita, Oklahoma City, Fort Worth and St. Joseph has had a tendency to intercept livestock that would otherwise come to Kansas City. We are subject to that inter-market competition.

There have been no instances of losses to shippers in the last 10 years at this market. I have been informed by representatives of the bonding company that handles the bonds for the members of the Kansas City Livestock Exchange that the fact that that safeguard, as well as other [fol. 288] safeguards which have been thrown around the business by the rules and regulations of the Livestock Exchange, was the determining factor in securing a premium rate on their bonds which I understand to be the lowest in existence at any market in the country. That rate has tended to reduce our costs.

The method of remittance requires the employment at this market of a relatively greater amount of capital on the part of the market agencies. We have a rule in the Exchange that requires that we make remittance of proceeds within 24 hours after completion of the sale. Many times we make remittance on the day of the sale. We remit the money directly every day to the owners of the livestock in the country before we have collected the money which represents the purchase of the livestock.

I think that attached business is a value to a market agency because it increases the volume of that market agency. It takes money, time, effort and plenty of hardships to build up an attached business. I think that the

item of attached business should be given consideration in determining rates and charges which we are allowed to collect.

There are a number of hazards attaching to this business and I have made efforts in the past to get bonds that will cover some of these hazards but I have not been successful in all instances. We sell large numbers of livestock to the four big packing concerns and they are not bonded. We have a hazard incident to the sale of livestock that may be stolen. There is a hazard incident to the sale of mortgaged [fol. 289] livestock and my organization has one lawsuit pending against it for $10,000 by reason of the fact that we remitted the proceeds of sale and it turned out later that the loan was taken direct by a bank here at Kansas City. Several months ago a steer got out and injured several people on the street uptown. That market agency is now being subjected to several lawsuits. We are responsible if the [fol. 290] correct amount of freight is not collected. It is not unusual for wild animals to be received in shipments to the market and many times injuries occur to different employees or owners of the business. We sell livestock to strangers and accept their checks. We have the hazard incident to the failure of our depositing bank, that is the banks with which the shipper does business. We have another hazard in instances where we may purchase livestock that are not in the most healthy condition. I understand Missouri courts have held against firms at this market in the past for the reason that they purchased livestock for their customers and upon its arrival in the country it proved out that they were not in a healthy condition. We have the hazard in this business of collections on livestock purchased for persons in the country where the banks may fail. The hazard relative to the sale of stolen or mortgaged livestock is insurable. I know that one of the insurance companies of this country writes a policy covering the sale by market agencies of stolen or mortgaged livestock upon which a certain per-car charge is made. We have carried that insurance. We did carry that insurance but dropped it for one year for the reason that it was not the kind of contract that we wanted. It contains a clause that requires the exercise of diligence on the part of the market agency. We did not carry that insurance during 1929.

I have reason to believe that there are probably other hazards of our business that a policy can be written on but at a rate which would be quite high and perhaps prohibi-
[fol. 291] tive. I have had information that if a contract of insurance without the limiting clause as to the exercise of diligence were written it would require a premium of 50 cents per car. They would not agree that it could be done but there was a possibility. I have been informed that all persons are assumed to have constructive notice of mortgages recorded on livestock wherever the livestock in question might be situated. In view of that fact it would be a serious question as to whether in event the selling agency had not examined the particular records of the county out which the livestock came liability would attach to the insurance company in event of loss due to the sale of mortgaged cattle. Insurance can be had covering liability imposed by law on market agencies arising out of injuries to employees or the public. In the particular case where an action was instituted against my firm last year arising out of the sale of mortgaged cattle our firm remitted the proceeds immediately in the usual course of business to the Minneapolis National Bank of Minneapolis, Kansas, and it subsequently developed from an examination of the records in the office of the Register of Deeds of that county out of which the cattle came that there was one recorded mortgage unsatisfied of record for $25,000, the notes secured by which being payable at the Minneapolis National Bank. Nevertheless we were confronted by this lawsuit brought by the Liberty National Bank of Kansas City, Mo., in which it is alleged that the former notes had been satisfied although not released of record, and that a new mortgage had been executed of a later date and recorded.

[fol. 292] I do not believe it would be possible to examine the condition of the title in the case of each shipment. We try to exercise a very close contact, as well as a close supervision over the remittances of livestock. We contact in our trips to the country not only the feeders of livestock but also the banks. We obtain information on these visits that is beneficial to us.

I was informed by a member of Cassidy Southwestern Commission Company recently that that firm was held liable in a suit by the Santa Fe Railroad where the freight

rate clerk had incorrectly quoted the rate and the shipper had become insolvent. I understand that if a commission firm files notice to the effect that it is simply serving as agent to the shipper that that constitutes due notice and relieves him of responsibility.

The National Livestock Exchange was active in sponsoring the passage of the Newton Bill providing for that arrangement. I understand that blanket notice is not acceptable to transportation companies at this market and that they are demanding a separate notice in respect to each individual transaction, so the question remains undetermined whether notice that has been given by the various commission firms to the railroads meets the requirements of the Newton Bill. The commission company is liable if there is an incorrect calculation of the total amount of freight by the employee of the commission company resulting in an undercharge.

When a stockman ships to a cooperative organization I think many of them feel that they are members of that organization and they pay their employees a salary. In the [fol. 293] case of the old-line market agencies the patron employs his agents on a fixed charge. The patrons of the cooperative share in the surplus at the end of the year's operation. We strive to conduct our business with as great economy as is possible and still maintain the character of [fol. 294] service which we desire to give to our patrons. We derive the benefit of all the efficiencies of method and system of procedure that have been built up by the past experience of the Exchange. Contracts of sale are closed sometimes by a nod of the salesman's head or the motion of his whip or his cane or his spoken word, "I will sell." If we had to draw up contracts in closing up these different sales we make we never would get through. There is a rule of the Exchange that stands behind these trades that are made and in the event the buyer or seller does not go through with the contract the trades are enforced because of the regulation which the Exchange exercises over members. The same thing is applicable to non-members of the Exchange under the market practice agreement. The benefits of the efficiency of method and expedition of sale and purchase are passed on to the customer; the same is true of all the other rules of the Exchange except in the instance of fire insurance and hog dockage.

My father devotes the major part of his time to the purchase of livestock for some of our customers. We still have men coming to us for whom he has been buying cattle for 25 or 30 years and when they come they want him to assist them in selecting their cattle. He is also active practically every day and we confer with him at different times with reference to the market and the different livestock that we have to sell. Besides myself the other owners interested in my organization are my father, my brother, Frank J. Morgan and C. M. Adams. My father came to the Kansas City stockyards in 1878. Mr. Adams spent his early boy-
[fol. 295] hood in the yards. His service aggregates approximately 35 years. Mr. Morgan's service on the yards will approximate 27 years. My brother's service will aggregate about 17 years and in my own case, approximately 20 years.

Excluding unpaid losses represented by lawsuits heretofore referred to, the total return to the five owners above expenses in the year 1929 was $40,600. Our firm ranged fourth or fifth in volume in that year out of 60 odd different organizations. My own individual return was $6,014. When we started out the year my drawing account was set at $5,000. When we bumped up against this big lawsuit we deducted each month so much from the drawing account to put into a reserve fund. This deduction from my salary was about $78 per month. If the lawsuit happens to be decided against us the drawing accounts will be reduced approximately 25 per cent. There will be some quite material reductions in the drawing accounts of our owners going into next year. Business has been less this year than it was in 1929. It has not been finally determined whether we will keep up the salaries of our employees to the present level but we want to do the best we can. I testified that we were going to put on an extra night yardsman.

Redirect examination:

I do not know whether the commission firms pay higher salaries to their salesmen than are paid at other markets. I do not know whether they employ more salesmen to handle the same volume than at other markets. We would not dare to employ separate salesmen to sell cattle so fed on
[fol. 296] the different kinds of feed. That would be a dead give-away. We want to keep the buyer in doubt all

the time. When these buyers come to us they throw a sort of a smoke screen to try to cover up their real desires and their real orders, and we have to sort of penetrate and get under that smoke screen. I do not think that there is any market in the country where just one particular class of livestock is marketed. I think the variance is greater at Kansas City than at the other markets. I think there are other markets in the country where more high-priced cattle are sold than at Kansas City. I mean a greater number of high priced cattle that are well finished.

Whenever my presence is requested by some customer I try to get away and visit him, and during those trips I take advantage of the opportunity to gain knowledge regarding the cattle situation in that locality. For several years I have been invited annually to attend the State Bankers' Convention in New Mexico. Either before or after I will try to arrange to have a few days to get around over the country, and talk with people from the State and other States. On these trips I might look over some cattle. They are usually made at my expense. I have been in Arizona, but do not go every year. We have men at the market who go to Arizona every year, and to a great number of Western States. I make an annual visit to different meetings held in the State of Kansas, and occasionally in the State of Texas. In my own case the trips that I make are confined to an area, I would say, some 400 miles from the [fol. 297] market. We divide that up to some extent, and my partner makes an annual trip to Colorado, and many trips during the course of a year down into Texas. Some years I will go to Colorado, and he will also go to Colorado. We have no set rule on that. We go as occasion demands.

Traders who purchase stocker and feeder cattle at the Kansas City market and re-sell them will buy from one head to a carload, and sometimes more than a carload. As a general rule, I think their purchases run more to units less than carloads. Frequently, we sell several units to the same trader on the same day.

I think the information will show that the receipts of hogs at Kansas City are falling off. It is my information that the production of hogs in this territory has been on the up grade. By recent years I mean during the last four or five years. Within that time direct buying by packers has increased. The inter-market competition is very keen.

The Wichita market is making a bid for hogs out of Kansas. I have some friends in the country who do ship direct to the packers, and they have told me that at certain times a packer to whom they consign will call them up and tell them not to ship any hogs, and at other times they will call them up and tell them, "We will take as many hogs as you have." We have a customer in Kansas who ships several hundred loads of hogs a year. Most of them go direct to the packer. The only time that we get to sell any of the hogs, is when he has received a telephone call from his packer that he does not want the hogs.

[fol. 298] I do not know of any particular days when there were serious peaks in the hog receipts at Kansas City caused by the cessation of direct buying by packers. We have two hog salesmen in our firm. They handle the hogs that arrive to our firm whenever they come. I consider that Kansas City is the basing market for stockers and feeders. The main reason that people from Ohio and Pennsylvania come to Kansas City for stockers and feeders is because they cannot get the kind of cattle they want closer to home. The prices paid for fat cattle at Chicago are a certain determining factor in the prices paid at Kansas City. We usually figure that they try to maintain that differential between the two markets that would be incident to the transportation costs. The packers watch those things very closely, and I think they intend to center their demand at any point where their buyers are located, depending on the price level in effect. The market does not stay out of line very long. A market depends on its volume as to whether it is a high cost or a low cost market. As your volume increases your unit costs decrease. Direct buying at Kansas City decreases the volume of livestock that the commission men handle. We have to have volume, and that is the thing we try to maintain at all times. It is not the cause of the decrease in volume, but the fact of the decrease in volume which affects our prosperity.

The charges under which we operate at this market were made by representatives of the Packers and Stockyards Division of the Department of Agriculture, and they are cer-

[fol. 299] tain fixed, specified charges, and we follow them. I understand that we are permitted to file with the Secretary of Agriculture an increased charge. We have not followed the policy of filing an increase in charges whenever

the volume decreases. Packers who buy at the Kansas City stockyards could restrict their purchases and cause congestion, and I think that has happened. We like to see a good, active demand from all sources, because when that is the condition we can realize higher prices. Hogs are the only species handled at the Mistletoe stockyards. Competition on a stockyard has a tendency to increase prices which are obtained for livestock, because where you have competition among sellers you have that ever present desire of the salesmen to obtain better results than his neighbor might obtain. A good many times we obtain more than the purchaser wants to pay. Your salesman is always resisting those lower prices. A good many times the purchaser has orders to buy lower, but the salesman's effort has to resist that. Last week I handled two loads of cattle for a man in Kansas. I asked a packer buyer 11 cents a pound for them. He bid ten and a half and left me. I got another packer buyer, and he bid 10.75, and then I got another packer buyer and he bid 10.85. I appreciated the fact that I was getting close to the value of those cattle on that particular market day. I came pretty close to accepting that last bid of 10.85. As I was walking down the alley, I met the buyer who had been in the pen first. He asked me if I wanted to sell them to him, and I said I absolutely did not. When he asked me why, I said that it was because [fol. 300] I was bid 35 cents a hundred more than he had bid me. He went back to look at them, and I stood pat for my 11 cents, and just missed ~~the~~ mark by five cattle, which I took out at a dollar a hundred less, which made the cattle average just about 10.90. That was competition among the buyers. We are very rarely satisfied with the best price we can get, but it is just not in the trade to get more for them. That is how trading makes the price. I think a single seller on a market would develop a single buyer, for the reason that it would be very unusual to see centered on a market where there was just one selling agency a great buying demand. If you are the only merchant in a town that had a particular class of goods, and I have need for that particular goods that you sell, I could go across the country a short ways to another point where there would be other merchants that had that class of goods. The tendency would be for me to go where I could have the benefit of a selection. Of course, buyers

could divide up the time so that only one would buy on a given day on a market where there are more than one selling agency.

I have worked for both the so-called small firms, handling a medium sized amount of business, and I have also worked for a large firm. I haven't had any greater difficulty in disposing of my livestock in one as compared with the other. I would not say that a firm which has a large percentage of livestock of a given species and grade would be in a better position to obtain a good price than a firm which had such a small quantity of livestock that the buyer could afford to ignore that firm,

[fol. 301] I think that the members of cooperatives do more real soliciting.

I think that the question as to whether it would be desirable to prevent an increase in the number of commission firms doing business on the Kansas City market could only be determined as the result of actual experience. There are people in the country shipping to all market agencies now in existence at Kansas City. They necessarily must have a certain patronage or otherwise they could not keep their doors open. I think that it is a problem that rightfully belongs with the livestock owner himself. As long as there is a demand for the services of all these firms here I cannot conceive of any way that they could be limited or restricted, I am not qualified to say as to whether or not fewer firms would be desirable.

I believe that competition in selling is a highly desirable factor in public livestock markets. By saying that the Producers Commission Association was subsidized, I meant that they had at their disposal certain Government funds which are not at the disposal of my own organization. I do not have knowledge of just how they do come into possession or use of this money. I do not know whether it is a loan on which they have to pay interest, or how they get it. I have had customers come to my office and ask me if I could obtain finances for them at a rate of interest they could obtain it from a cooperative organization, and on learning the rate is six percent at which they could borrow the money from the cooperative I had to tell them that I [fol. 302] did not know where I could go. I could not show any particular items of expense that have been incurred

by my organization by reason of this competition. Some of the market agencies at this market make loans. I do not know whether the business of lending money is as extensive as it used to be. I do not know whether the Producers Commission Association pays for the advertising done by the publishing house connected with the National Livestock Marketing Association. The total volume of the Producers Commission Association is less than of my organization. The Farmers Union has a larger volume than we have.

I do not know of any firm at the Kansas City market which has lost money on account of the fact that the four large packers are not bonded. I recall one small packer that was forced to the wall who owed quite a lot of money to different market agencies, but he happened to have a bond which covered the loss. We have suffered losses by reason of some of these hazards. We shipped livestock for a party in Ohio, and on arrival of the shipment he refused to honor our draft. We were forced to take charge of the load of cattle and ship them to Chicago. It resulted in a loss of somewhere from six to seven hundred dollars. That has been within the last five years. In another instance we bought several hundred steers from an Iowa party, which were on feed in Kansas. When we cleared up that deal there was a shortage of some twenty-six hundred dollars, and we have never been able to collect that amount from the man for whom we made the deal. That has been within the last few years. Those two instances I recall. [fol. 303] I might, with some investigation of our records and books, have some more for you.

In connection with our purchases for John Morrell, we have to have capital or credit sufficient to pay for these purchases. They don't know the amount of their purchases. Some weeks they don't purchase anything. The law suit with the Liberty National Bank, in respect to the livestock which we sold, the proceeds of which were remitted to the Minneapolis bank, we expect to win that suit.

There have been quite a number of injuries caused by wild animals in the stockyards. I would not say that it is a frequent injury. You can never tell when a wild one is going to take after you, or whether you are going fast enough to get out of its way. I think it would be within the right of a market agency to demand cash for livestock

it sells, but it would be very impracticable. We could refuse to purchase until our customer had furnished cash.

The item of expense in connection with telephone and telegraph contains an item of expense that we are put to in trying to determine in advance whether or not a man's check is going to be honored for livestock which we purchase. I was particularly interested in securing a bond protecting in matters such as concern the selling of livestock to people in the country and to packers who are not bonded to us. That constitutes a very material hazard in our business, when you consider that there are days when we will sell to an unbonded packer fifty to sixty thousand [fol. 304] dollars worth of livestock. We have received pay in the past, but that is no assurance that that is going to continue right along. Something might happen to one of these buyers. The livestock that we sold might be in the cooler, and all we would have would be the beef, if we could identify it, and that would be very hard to do. I believe that if we sold livestock to a packer, and the packer refused to pay, the owner would look to us for payment. Of course, that is a question of law. I do not know what the outcome of it would be.

[fol. 305] F. E. Mollin, a witness called by the Government, after being duly sworn, testified in substance as follows:

My business address is 515 Cooper Building, Denver, Colorado. I am secretary of the American National Livestock Association, which is an association of stockmen in the western States composed largely of cattlemen, but we do have three or four of the principal wool growing associations which are member agencies. Wyoming, New Mexico, and Arizona wool growers contribute to the American National. By stockmen I mean producers of livestock. Members of our association are composed of individuals as well as associations. The principal associations which are members of the American National are the Nebraska Stockgrowers Association, the Wyoming Stockgrowers Association, the Montana Stockgrowers Associations, the Utah Cattle and Horsegrowers Association, the Washington Cattle and Horsegrowers Association, and the

Oregon Cattle and Horsegrowers Association, the California Cattlemen's Association, the Nevada Stockgrowers Association, the Arizona Stockgrowers Association, the New Mexico Stockgrowers Association, the Texas and Southwestern Cattle Raisers Association, the Colorado Stockgrowers Association, and the three woolgrowers associations. We have no affiliations of nothing but hog raisers. There are some hogs raised in our territory by cattlemen. There are a good many cattle shipped by members of our association and its affiliated associations to the Kansas City market from Colorado, New Mexico, and Texas.

[fol. 306] I have been secretary of the American National Livestock Association since April 1, 1929. We are interested in all matters of national importance to the western stockmen, such as tariffs, railroad rates, legislation, advertising of meat products, and the matter of stockyard and commission rates. It is my duty as secretary to take an active part in these things. Prior to becoming secretary, I worked for a bank committee for nine months, liquidating a ranch property in Nebraska, and for 22 years I was with a firm of large ranchers and feeders in Nebraska. I do not recall that we ever marketed any cattle at Kansas City. Our livestock were marketed largely at Omaha and Chicago. I was frequently on the Omaha stockyards in connection with the sale of livestock of the Kent & Burke Company. I made it a practice to go to the yards every time we had a shipment on the market, and in addition made frequent trips down there to find out how stock was selling. We occasionally made purchases there. The American National Livestock Association has an annual convention, and each of the State associations has its annual convention. I always attend these meetings. That is my principal source of contact with livestock producers. We have frequent visitors at our offices in Denver, and we meet producers in large numbers at special meetings.

I have heard discussions in regard to the desirability of the Secretary of Agriculture making inquiry into the reasonableness of commission rates at the various stockyards. The most recent one was at the mid-summer meet-[fol. 307] ing of our executive committee, which was held in Denver on August 5 and 6, at which this particular matter was discussed, and I was ordered to appear at this

hearing. We have a large executive committee, something over a hundred members. In addition, the presidents and secretaries of our State member associations are considered ex-officio members of our executive committee.

I would have to refer to the records to determine which members of the executive committee were present at this meeting last summer. The instructions were to proceed to take part in this hearing along the same lines that Mr. Tomlinson participated in the Omaha commission case. Mr. Tomlinson was my predecessor. I have consulted with both members of our association and nonmembers, who have stated that they were very anxious to have the hearings under the Packers and Stockyards Act, to determine fair and reasonable charges, expedited. Following the war, there was a great protest from the entire producing region as to the commission rates, and at various places they were proceeding to take action to adjust rates by conference with the individual exchanges. Then there was a proposal to determine commission rates by arbitration, and that rather set things back. The livestock industry was tremendously disappointed in the award, and realized that they could have got lower rates by direct negotiations. They were good enough sports to accept it until the Omaha people tried to advance the rates, which reopened the whole subject. It is the general attitude of the stockmen with whom I came in contact that they desire inquiry made into the reason-
[fol. 308] ableness of the commission rates.

Cross-examination:

The Kansas Livestock Association is not affiliated with my organization. We have a few individual members in Kansas. I personally have had no experience on the Kansas City market. I have been at the Kansas City Stockyards a number of times and I never observed that there was any particular distinction between the operations here and at Omaha. I never was in two yards that were exactly the same. I never saw any difference at Kansas City that would possibly affect the cost of operations of the commission men. This hearing is being held at a time when wage scales are certainly lower than they were when the Omaha hearing was held. I think they could not have any higher prices than they had at Omaha, probably should be lower. I do not think that the Kansas City Livestock Exchange

considered itself bound forever by the Arbitration Award.

I made no investigation to determine whether the percentage relationship of total commissions earned at the Kansas City market and the gross sales and purchases have increased or declined since the arbitration award. I do not think the value of the livestock has anything to do with it and never have thought so. I never have understood that it has been a factor in determining the rates. Some people think that the rates should be on a percentage basis but I never have thought so and I do not understand that that has had anything to do with determining the existing schedules. I do not know anything about whether costs have actually declined or increased in the operation [fol. 309] of the business of the respondents in this particular hearing. I do know that the general wage scale is lower now than four or five years ago. It would naturally apply to common labor that is involved. I would not say whether there has been any reduction in their more skilled labor. I never made any particular study of what would be the reasonable cost of service in the marketing of other agricultural products comparable to the services rendered by livestock commission men. Each agency that handles such products would have to justify the charge they make according to the conditions in that particular commodity. You have to consider the cost of doing business. Naturally the percentage is lower in the cost of a carload of fat cattle than in the cost of agricultural commodities which are relatively low-priced.

Experience in business, knowledge of livestock and trading ability are essential to the fitness and competency of a livestock salesman. He must have skill, ability, experience and knowledge. I think this applies more to fat animals than to feeder animals. I think that would be quite possible that the rate charged for selling does not determine the ability of the salesman.

Our membership consists mostly of range cattle producers. There is a great range in variety in the value of stockers and feeders. I know that there has been an increase in this range since 1900. I think the range in values has been increasing rather than declining. In the case of feeder cattle the difference is so easily apparent that I have never thought that it required the expert knowledge of cattle to handle feeder cattle that it does to handle fat

[fol. 310] cattle. A feeder cattle salesman has to consider future possibilities of those cattle. Speaking of feeder cattle, they are sold to the speculators while there is a comparatively small number of fat cattle buyers. The commission men can sell them direct to the countryman or to another commission firm acting for a buyer in the country but you have got a lot of speculators on this market. I was on this market this summer and was out through the stocker and feeder division. I have always called the speculator a necessary evil. The more direct the movement the better we like it. It is possible that there are too many speculators just the same as there are too many commission firms. I took occasion to look up the number of commission firms on this market and I note that they have been increasing since 1922 while the receipts have been decreasing, according to the yard company's report. There are order buyers on this market. His presence is a very desirable factor from the point of competition. As the number of order buyers increases it is the natural assumption that you get a better price for the livestock. The increase of six or seven firms in the last 7 years might be in order buyers. I cannot say as to that.

The Inter-Mountain Livestock Marketing Association is a cooperative concern of the livestock producers and feeders in the Inter-Mountain territory. I called the first meeting but I have no official connection with it. It is financed by the National Feeder and Finance Company which is in turn financed by the Federal Farm Board. I had nothing [fol. 311] to do with making the form of contract. That was made by its own board of directors. The position of the American National with regard to marketing matters has always been to make available to their members every medium of marketing there is. I cannot say that I have ever read the final draft of the contract issued by that association. If there is an arrangement for a percentage charge in that contract it is my understanding that it applies on direct marketing and would have no reference to shipments to central markets.

The California Cattlemen's Association reduced their charge from 3% to 2½%. They got off to a bad start. They did not have any central market out there when they started this organization. They were selling direct at the time. They are thoroughly convinced that they have

come nearer getting the value of their livestock since they have had the organization. The first divergence from the central marketing idea was the direct marketing of hogs. The fact that it was increased very rapidly has proved that a great many producers feel that it is to be valuable. I have never felt that we were going to do away with these central markets. If the operations of direct buying decreases the volume there would be just that much less business for the commission man. If it makes the volume lack uniformity I imagine it would tend to increase costs.

The transportation costs on livestock is a factor that enters into marketing in a much greater degree than the commission charges.

I do not recall with any exactness the relative amounts [fol. 312] of these charges. During the last 10 years I would think that the transportation charges had increased more than the other charges. The differential that exists between the lives cost of the animal to the packer and the wholesale price of the product has not varied much since 1921, according to the information I have. It might have increased a little. The retail costs have continued to increase. I do not know about the percentage of increase in the commission charges or whether they have borne a closer relationship to the cost of living than in the case of this spread which represents packing costs and retail costs. The difficulty there is that we have no control or anything to say about what the commission charges were in those days. We haven't the figures to assume that they were on a proper basis in those days. They may have been too high relative to your charges then.

The livestock industry today is in the dumps and cattle are losing money. We should pay only a fair and reasonable charge for service. It is pretty hard to say just what the immediate effect on the industry would be but it is the total effect of all the charges that go into it. If you say one little charge is not of any effect and there is another, the grand total makes a considerable difference. We think that the nature of your business here has been such that it has attracted more men than are needed to conduct the service and that makes it tough for all of you. I think the only practical way to regulate the number involved in the business is through establishing reasonable

rates based on good service and efficiently operated firms. [fol. 313] I am not in accord with any idea that would fix costs solely on the basis of the product handled. I have never thought that the commission business at the central markets could be based on a percentage charge. The situation in California is quite different. They have a very expensive way of doing business due to the fact that it covers such a wide territory.

The Kansas Livestock Association was formerly affiliated with our organization.

I think the difference in views with regard to direct buying of hogs had something to do with their withdrawal from the American National. It would seem that a greater efficiency in selling would be required where there is a wider ranger of spread than there would be in a smaller spread. For a good many years packers have been sorting cattle. I did not know there had been any marked change in recent years. I think the increase in drafts has been due at least partly to the truck-ins and the smaller units. An increase in the number of drafts affects costs and that will certainly have to be considered. I know that there has been some change in the methods of packers. I have been in several conferences with them this summer with reference to grades but I did not know that they had put that into effect already to the extent that it affected the number of drafts. I presume a change of that sort is in the interest of increased efficiency in selling. If it affects the handling of cattle in the yards it should be given consideration.

[fol. 314] I think there is a marked relation between the average cost of farm labor and its comparison with the cost of commission rates. If the commission men have to deliver the livestock to their pens that should be taken into consideration. The duty of the salesman is to keep in touch with the market conditions, receipts at his market and at other markets and to try to interest the buyer in his particular kind of livestock and then to sell them to the best advantage. I would think he should keep in touch with the demands for livestock on the market. The more you scatter your selling to a great number of firms, the harder you make the task for each one of your salesmen. After he sells them he usually goes to the office and talks to the shippers. It is an advantage to him in grading his cattle

to keep in contact with his customers and their methods of feeding and finishing cattle. The more he knows about what he is selling the more efficienc-y he can sell them, but I do think that there is a limit to the amount of field service that a commission man should try to give. It is awfully expenseive.

We handle grain in Nebraska and I am familiar to some extent with the grain trade. In connection with selling grain they have scientific and mechanical device- that test for protein and in effect to establish grades. There is no such device to register grade and value of animals. The selling of grain is indoors by sample on a product previously graded. In the case of a livestock salesman it is up to his judgment.

[fol. 315] In the old days you had a two season market. You had a market for six months of the year when there was not so very much coming to market except the grass cattle from the western ranges. We did not have an all year round feeding program in those days. That has been accountable for some of the narrowness in the spread at that time as compared with the present time. We have an all year round feeding program now. In the old days you had at one season of the year mostly grass cattle and at one season mostly fat cattle.

There is one thing that has a lot to do with the shipment of livestock to cooperative concerns and the competing agencies. That is the old friendships. Members of our association in Colorado have shipped cattle to this market for many years who are interested in cooperative marketing but their loyalty to the men they have known for years has kept them shipping to the old line concerns. Friendship might have built up on efficiency but it might continue in spite of inefficiency. I have in mind a firm that our company did business with when we were in Nebraska and we continued doing business with them long after efficiency on their part would have dictated that we do so. We finally did take our business away from that firm. We stayed with him a long time just for loyalty. That illustrates what I have in mind. I think that a sensible man realizes that unless he is efficient the business would leave him. They have to try to maintain their standing. I do not know of any cases of errors in remittances on this market or anything about the individual profits of the commission men

[fol. 316] and how such profits compare with profits at other markets. I am interested in a fair inquiry into the matter and that a fair result will be arrived at. I am also interested that that result will retain efficiency upon the market.

Redirect examination:

There is a great deal of money that is now spent in the solicitation of business that is not for the purpose of attracting new business to the market, but simply one firm trying to get it away from another firm. That does not do the livestock industry any good. If there is no limit on the amount that can be spent in that way, except the money that they can make through commission, there is the constant urge to have higher commission charges. As I have observed it, the only result of higher commission charges has been more firms in business. Conversely, it seems to me that if you have a less return from commission there has got to be some restriction of the amount that they can spend in advertising and business solicitation. The natural result of that, unfortunate as it seems, locally, will be that some firms would have to retire from business.

In connection with the matter of commission firms' salesmen going to the country, I think in recent years there has been more of that. Along the end of the week salesmen go out to the country to inspect cattle that are on feed, tell about what they will bring, and when to market them. I think it is an expensive service, and to a certain extent a dangerous service, because if a salesman goes out there, [fol. 317] and tells the feeder that *that* his cattle will bring more than they actually will bring, he has got a disappointed customer. I am not convinced of how practical that service is. I believe the practice can be abused. It is very expensive and hardly justified by the benefits to the industry. If the man whose cattle were looked after by the salesman had to pay the expense of the trip, that would have a limiting effect on the demand for this service by the producers.

Recross-examination:

Certainly a salesman should be allowed to go to the country and spend a reasonable amount of time, but in a general survey trip rather than as an individual inspection. It

seems to me as pretty well known on the markets like Kansas City as to what conditions are in the various territories tributary as to the market. You get lots of your information by contact with shippers as they come to market. I would not say that I am in favor of restricting entirely a man going to the country. I think there is a limit to it. The only thing you could do would be to tell the country men whether or not conditions justifies your going. You would have to take into consideration your incomes in arriving at that judgment. It is not practical for salesmen to inquire into the feeding conditions of everything that he sells. In the spring of the year when eastern Nebraska is loaded with long fed cattle, the solicitors from Chicago just absolutely swarm out into that country. That is not rendering any service to the industry, and the industry is paying for it. These solicitors come out there and tell [fol. 318] their tales as to what they can do with those cattle. We would not pay any attention to that kind of stuff. I think the exchanges have met that situation to some extent. I do know this, that in the operation of exchanges in many cases the substantial men on the exchange who have definite ideas or responsibility and judgment in those things, are sometimes outvoted by the less substantial men. I would not say that necessarily applies to Kansas City. I think there is certainly a definite advantage to the salesman to make trips to the country and get posted as to the conditions, and see as many cattle as he can. It is not a practical thing to do it to an extreme.

[fol. 319] E. B. SPILLER, a witness called by the Government, after being sworn, testified as follows:

My business ad-ress is Fort Worth, Texas, and I am secretary and general manager of the Texas and Southwestern Cattle Raisers Association, which is a voluntary organization of cattle producers in the States of Texas, Oklahoma, and New Mexico. The membership is composed of individuals, firms, and corporations, which are engaged in the actual production, shipment, and sale of cattle. It is affiliated with the American National Livestock Association. My association holds regular annual conventions, and we otherwise come in frequent contact with the member-

ship of that association. Many of our members are large shippers to Kansas City. It is their feeling that as they are paying commission charges at the stockyards an investigation to determine the reasonableness of those charges should be carried on by the Department of Agriculture.

Cross-examination:

I do not know whether those charges are high or low. I was not at the meeting when the agreement as to the arbitration was reached. I attended a preliminary meeting. I cannot recall definitely whether our association was a party to that agreement, other than through the American National Livestock Association. I would not want to back out of any agreement that we made. I do not know that we ever agreed to go into that for any stipulated length of time. Changed conditions might develop which would warrant a change in the charges, which might be an in- [fol. 320] crease or *or* a decrease. Changed conditions might warrant a change in the rates which were established at that time. If this investigation develops that changes should be made we think they should be made. It is possible that they might find that they should be made whether or not by changed conditions or that the agreement of the rates fixed at that time are not entirely all right.

I am not advised as to the cost of operations on this market. I am familiar in a general way with the operation of the yards; not so much at Kansas City. I have had experience in the commission business at Fort Worth. I am not familiar enough with the marketing of other products to know how the skill and ability of a salesman in those lines compare with the skill and ability of a livestock salesman. The competency and efficiency of salesmen are substantial factors in the price which one gets for his livestock. In order to be an efficient salesman you must have honesty, integrity, experience, knowledge, natural trading ability, and judgment as to human nature. The salesman is the one who determines what price he should ask for the livestock. It would seem that his responsibility is greater than the salesman of merchandise with a price list in his pocket.

The majority of our membership is composed of producers and growers. We do not have many who feed livestock.

Our organization has not filed a complaint on the present schedule of rates here in Kansas City. Pasture rentals in Texas have increased over the period of the last 15 or 20 years. I would say that short time rentals have probably increased 50 per cent since 1913 in the Panhandle country. [fol. 321] In the case of large bodies of land they are under long time leases, and I do not think the increase has been that great. Our association does not operate an organization that sells livestock on commission at public markets. The association did some organization work in connection with the Texas Livestock Marketing Association. The plan was to enter into contracts for producers to market all their production for a given period of time through that association. I do not know whether they went through with it or not. That association is hooked up with the National Livestock Marketing Association of the Farm Board set up. I do not know what the connection is between it and the agency at Kansas City, which is also a member of the National Livestock Marketing Association. The competitive, centralized, livestock markets have an important place in livestock marketing. I think that the rates should be such that the company can operate in such a way that they can give efficient service and attract men of ability. Men have to have experience in order to do the work efficiently.

[fol. 322] ALBERT K. MITCHELL, a witness called by the Government, after being sworn, testified as follows:

My business address is Albert, New Mexico. I have been engaged in the cattle business all my life. I handle Hereford cattle, both registered and commercial cattle. We have about 1500 head of registered cattle on the ranch, and about 2500 head of commercial cattle. We market anywhere from 35 to 70 cars a year. Part of them are marketed at public stockyards, principally Kansas City. I am a member of the American National Livestock Association, the New Mexico Cattle Growers Association, and the American Hereford Breeders Association. I am a director in all three, and vice president of the New Mexico Association. I have frequent contacts with producers of cattle in my section of the country who ship to the Kansas City market. I believe that they are interested in having this investigation carried out. It

was taken up at the quarterly meeting of the New Mexico Cattle Growers Association, and it was urged that the association have a representative at the hearing.

I represent that association. I have been on the Kansas City stockyards frequently in connection with the sale of cattle. I have sold cattle at Denver and Oklahoma City. I do not know anything that renders it more difficult to sell cattle on the Kansas City Stockyards than on any other stockyards. I have not observed that it took a better or more intelligent or more highly trained type of salesman to sell cattle on the Kansas City Stockyards than on any other stockyards which I am familiar.

[fol. 323] Cross-examination:

The meeting of our association which I referred to was held probably in August 1930. We have not filed any complaint with the Secretary of Agriculture on behalf of that association. At the time of the meeting we were advised that the Secretary had pending an inquiry upon the reasonableness of these charges. Most of the cattle from our section come up here. They are mostly stockers and feeders. This past year we marketed only a few cars of cattle at the Kansas City market. By direct buying I mean that the feeder from the corn belt goes down and buys calves in person. Those transactions are frequently made and are becoming more frequent. I cannot say whether there should be a great deal of difference between Kansas City and Denver, and possibly Omaha in so far as difficulty of buying cattle and judging correctly and accurately the quality and dressing percentage. The methods by which a steer is finished and fattened cut considerable figure in the quality of the animal from a beef standpoint.

The prices established from day to day at the Kansas City market having a bearing on the prices which are established on sales direct from the producers or range men to the feeder or finisher in the corn belt. They have probably had more influence in the past than they do at the present time. I would say that it is because there has been a demand created for those high quality cattle down there that will take care of them regardless of what the Kansas City [fol. 324] market does. There has been considerable activity and effort by individuals in building up direct contact with feeders.

We ship our cattle through the market like Kansas City or sell them direct when we want to. Today our cattle are coming to the Producers. That is our initial shipment to that firm. Before that John Clay has sold our cattle. I understand that if the Producers Commission Association had any surplus at the end of the year I would get the benefit of that proportionately. From that standpoint I would not be interested particularly whether other firms charge more or less. We have an organization subsidiary to our association called the Inter-Mountain Livestock Marketing Association. We have signed the standard contract with them limiting the number of head that they are to handle. It requires that the cattle be shipped to commission firms which are controlled by them or affiliated with them. That particular organization is a subsidiary of the National Livestock Marketing Association. My understanding is that these commission firms are not deriving any benefit from them. The money has to be loaned through a separate financing organization to producers. If you borrow from it you must be a member of one of these association-, such as the Inter-Mountain Marketing Association. In so far as they make loans I suppose it would stimulate the amount of cattle consigned to these particular agencies. If the rates were lower the producer would like to get the [fol. 325] use of that money at the low rate of interest.

The stocker and feeder cattle that come to the Kansas City market originate from all over the Southwest, and I suppose the Northwest. There is a great variety of grades and quality varying in value for feeding purposes. Each owner's livestock ought to be sold on its own merits. The salesman should be able to distinguish those cattle one from another with respect to any differential in grade or quality that might exist. The price asked or the price expected should be dependent to a large extent on the judgment of the particular salesman that handles the livestock. I think a salesman should have experience, knowledge, natural aptitude, trading ability, acquaintance with the character of the demands for the class of livestock that he is handling. I would not attempt to sell livestock as a salesman on the Kansas City market as compared with certain of the men who are on the yards. I think I can do a better job than a lot of them down there do. There are some firms that have very efficient men selling cattle. There are some worn out cow punchers from our country selling cattle in the Kan-

sas City yards that could not draw wages from anybody down in the country.

I believe that by eliminating some of these more inefficient firms you could increase the volume of business to those who are operating efficiently to enable those rates probably to be cut in two. It is my understanding that a commission firm to engage in business is simply required to [fol. 326] register with the Secretary of Agriculture. I believe it would be better if the Secretary were to register only men where public necessity and convenience demand it. I understand that is not the situation. I do not know of any efforts of the Exchange to limit the number of the personnel of its membership. I do know there has been a slight increase in the number of firms. I cannot see any objection in increasing the number of order buyers. I do not know anything about the actual cost incident to transacting business on this particular market. I have observed the widening differential in the amount paid for lower grades as compared with the better quality cattle. I believe that the premium in price on account of quality is a good thing. The spread in the price differential between the various grades to a certain extent would require greater competency on the part of salesmen and also place a greater responsibility upon them. I have noticed during the last 10 years a spread between the live cost and the retail price. I know that the increase in retail cost has absorbed the major part of the spread. I would not want to state whether the packing costs have increased more or less than the retail costs.

It is not the desire of the stockman to reduce the efficiency of the service. I want to see the most efficient service maintained. I realize that the price on any market has an effect on the price generally.

I know from our own experience that our prices are con- [fol. 327] trolled a great deal more by the buyers who go into the country direct and buy there than by the prices that are reflected from the Kansas City market.

I have approved the present method of remittance of proceeds. I believe it is better than sending out individual checks drawn on the bank here at Kansas City. I think a commission firm ought to have sufficient working capital to transact its business safely.

Redirect examination:

Personally, and I believe I would be speaking for the majority of the producers, one day would make no difference to them in the receiving of their remittance, and especially if it necessitates an increase in the commission charge.

[fol. 328] FRANK H. BETTON, a witness called by the Government, after being duly sworn testified as follows:

My business address is Livestock Exchange, Kansas City, Mo. I am general superintendent of the Kansas City Stockyards Company and have occupied that position 12 years.

It certainly is and always has been an open market. We encourage buyers on this market to the best of our ability. We feel that the more outlets there are for stock that is present and for sale, the more competition there will be and the greater benefits will inure to the producers of the stock. I believe that the more nearly the market and the prices established accurately reflect the true conditions of supply and demand, the more patronage the market is likely to receive.

Pen Assignments

Commission firms cannot all be in what they consider the most favorable location. The volume handled determines the number of pens which a firm occupies. The older firms retain their locations and the newer firms are, as a rule, assigned to the farthest locations from the center of the yards and they gradually work up as the years go by. There might be some advantage in location.

The receipts of cattle at this market are unusually heavy during the fall period for about four months. It extends from towards the middle of July up to and into November. At other times it begins a little later and extends up into [fol. 329] December. From the standpoint of the stockyard company it is necessary and essential to maintain, both in personnel and material equipment, a sufficient capacity for handling the peak movement. It naturally follows that market agencies handling that class of cattle would have to do the same. You can only partially recruit additional forces necessary to handle peak loads. You must keep a

nucleaus of experienced forces. In experienced men cannot drive livestock through the yards. It requires a knowledge of the handling of stock and the general work of the stockyards for men to be proficient in the performing of that service. When we bring in additional men to handle the peak movements, we employ men who have had previous experience so far as possible. Every new employee is given careful instructions before he is put into the yards. He is instructed in the methods of handling stock and securing gates when he is between the stock. Those men are placed in work which does not require the efficiency that later on would be required of him. It is of great assistance if a driver can identify cattle after he has once seen them. It is very exacting work. It requires accurate and experienced men, following long established systems and methods of handling the business. If you just picked up the ordinary run of men that you see down here on the street and put them in the yards to move the livestock it would unquestionably result in a great many difficulties. There are greater dangers in the stockyards to those who are inexperienced, and even experienced men sometimes receive injuries in the course of the ordinary [fol. 330] performance of their duties. The range cattle are not accustomed to confinement and the conditions which surround them in the yard. They become nervous and are wilder than native cattle. A large proportion of the receipts are range receipts during the peak movement.

We employ methods by which we keep in touch with those agencies, and we think it necessary or we would not employ them of course. Stocker and feeder cattle go out of this market into a very wide area to the eastern, central, western, and northern portion of the United States. We have shipments as far east as Ohio, Kentucky and Virginia. We have shipments of fat cattle going to New York, Detroit and Pittsburgh.

We have men who make periodical trips to that territory for the purpose of making contact with eastern slaughterers who have a demand for the class of cattle or hogs that come on this market. We are all engaged in the work of up building and maintaining the livestock market and necessarily all entities should work for that end. There has been quite a diminution in the volume of receipts in the last few years.

Competition among buyers and sellers plays a great part in the maintenance of the market. This business has been built up over a period of a great number of years during which competition has been very strong from other markets, and in spite of that competition it has gone ahead and increased its business until the last few years.

[fol. 331] If all livestock were consigned to the stockyard company and it, as one seller handled the sale of that livestock, competition would be stifled. Livestock salesmen know that the life of their business depends on their efforts and their efficiency in the disposing of livestock. In my opinion, if all this business should be directed through a single agency, salesmanship competition would not be so keen and the producer would suffer from the effects of the lack of competition.

If there was a single sales agency, in my opinion there would be few buyers. In my opinion the advantage would be to the buyer. I think an efficient salesman is a very valuable asset, not only by reason of his performance but by reason of his acquaintance and his personality.

An efficient salesman should have an accurate knowledge of all classes of livestock coming to the market. There are differences in value; experience on the market, natural aptitude for the business, trading ability, initiative and sound judgment. They gain these qualifications by their performance on the market. They work up in the business.

The train runners on the Kansas City market are generally efficient. The same applies to the yardmen. An efficient yardman is an asset to a commission firm. The duties of a train runner or a yardman are such that they must be acquired by experience. The bunching of cattle into "jack pots" tends to expedite the movement of cattle [fol. 332] through the yards. It is essential for a jack pot man to put as many drafts across the scales as he can within the time allotted for weighing during the turn which that firm has at the scales. It is very essential that he be accurate in the identity of the specific cattle that he puts into each draft. He must be accurate in the designation of the purchaser and the name of the owner of the cattle. There are frequently a great many drafts taken to the scales at one time. The jack pot weigher must maintain in his mind the identity of these different lots of cattle with respect to their ownership and with respect to the buyers

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or the parties to whom he is instructed to weigh them. I would not say that the average man could do it. It results from a natural aptitude to begin with and experience in the use of on the yards. An efficient jack pot man is not only an asset to his employer, but indirectly he is an asset to our company because the more rapidly he can place those cattle correctly on the scales, the more rapidly we are able to dispose of them.

In case the commission man's employee weighs stock to the wrong buyer and they would discover it, it is necessary to recover the stock from the buyer and have it identified and reweighed, or by consent of both the actual buyer and the one to whom he has weighed it, to make the change of delivery on the stock. In case no identification could be made the matter must be adjusted. Perhaps the commission firms would have to suffer, unless they were able to sell the stock or to dispose of it in such a way as not to [fol. 333] injure the owner financially. If cattle were not moved in jack pots from the drive-in chutes to the selling pens and from the selling pens to the jack pot scales, the business could not be conducted as expeditiously and more men would be required to handle the livestock. By a draft I mean the process of placing one lot, consisting of one or more animals, on the scales and having it weighed and taken off at the opposite end of the scale.

There has been a decrease in the number of head per draft that has taken place over a period of a good many years. It increases the expense. Some years ago there were a great many of what we term "country shippers." They bought stock in the country, assembled it, and shipped it in one lot. Those country shippers have disappeared to a large extent and in their stead the shipments are sent in by communities, and there have been shipping associations established through which the marketing of the stock is done for the original owners. That has had a natural tendency to decrease the number of head per draft. There has also been a tendency on the part of buyers to segregate the different qualities of stock more closely before buying them than after buying them as previously was the system. The packers buy their hogs in smaller lots and classify them before buying them. That puts the burden of sorting upon the yard operation rather than upon the plant operation at the packing house. That has tended to increase

costs of yard operation, both in the performance of a stock-
[fol. 334] yard service and commission services. That applies to both cattle and hogs.

Packer buyers are trained men, representing their principles with respect to the purchase of livestock. My observation has been that the buyers are recruited from the younger employees, who gradually grow into the higher service.

There are many different grades of cattle, particularly that come to this market. The climate is variable and the nature of the crops and feeds produced are variable. Those differences have an effect upon the value of the livestock that comes to market. It is in the interest of the patrons of the market that salesmen be competent men, and as far as I am able to judge they are a very competent set of salesmen employed at the Kansas City yards. I would not consider myself competent to sell livestock on the market. Every move that is made, and every record that is made with reference to handling livestock must be accurate.

Purchases and sales of livestock are accomplished by word of mouth. I believe that the rules of the Exchange and the market practice agreement are essential to the expeditious movement of business on the yards. The systems and methods have been developed to meet conditions as a result of past experience in the operation of the yards.

Country buying has increased materially over a period of the last ten or twelve years. As it increases or dimin-
[fol. 335] ishes it tends to decrease or increase the volume of livestock receipts coming through the market. Local packers have been particularly active in the purchase in the country of hogs in the particular territory served by this market. Direct buying of hogs in the country by packers has a tendency to put peak loads on the market.

Federal regulations as to sanitary requirements affecting the interstate movement of livestock have been increasing in their complexity and general scope from year to year. There are regulations with respect to breeding cattle that have to do with their origin and affect their movement into the other areas. There are changes and additions in regulations quite frequently in some states.

Redirect examination:

It is very infrequent that a shipper sells his own livestock on the Kansas City market. In such a case he is required to pay the charges before the stock is delivered to him. After the stock is delivered to him he is at liberty to sell and collect for it. I do not recall any such shipment recently.

We maintain a market reporting department and he reports all sales that are sent to his department and market conditions are wired to our traveling representatives from that department. Information of a character that is interesting to producers is sent through that department very extensively out through the country. We have a number of road men or solicitors who travel over a wide area of the country and keep the shippers in their territory advised [fol. 336] and instructed as to the advisability of marketing their cattle and solicit their patronage at our yards. We have some men who travel through the East and visit the various order buying prospects, giving them information with reference to conditions at this market. Through that contact we keep them better informed as to the facilities at Kansas City that would be beneficial to their business as compared with facilities at other markets. They keep them informed as to the spread in price and the freight rates. They put them in touch with the order buying agencies through whom the transactions are carried on. The stockyard employee never shows any partiality in his soliciting either for shipments to the market or where he is soliciting for order buying. These solicitors post the prospective patrons with reference to railroad services and with reference to the markets. They feature the advantage that we have over some other markets. Our men are uniformly very good judges of stock and try to advise them to their advantage. These men are good judges of livestock. They keep posted through our market correspondent who writes and wires them frequently. They keep themselves well informed. This activity is carried on constantly and continuously throughout the year. These men are divided up so that they concentrate on different sections of the country. The stockyard company sends out representatives to livestock meetings and conventions.

Unquestionably salesmen are not all of equal ability. As to their degree of efficiency there are certain different degrees. Unquestionably there is a variation in ability. [fol. 337] The same would be true with respect to those engaged in yarding.

Some years ago hogs were weighed, mostly all of them, in carlots and sent to large holding pens for the packers. The practice now is to weigh them in different lots and different titles.

I do not have in mind any specific instances when peak loads were thrown on the market by reason of direct buying by the packers. I am speaking just from general information. That is just my opinion of it.

Traders and speculators perform a useful function. They enable the buyer to select the classes of cattle he desires which would not be practical if he were buying from a commission firm. The traders sort them largely in carload lots but if a prospective buyer wishes to change some of the cattle from the lots in which the trader sorted them they give him that privilege. If the buyer overbids the packers and other buyers they get the cattle out of first hands. We ship a great deal of cattle bought out of first hands.

[fol. 338] B. C. BIGGERSTAFF, a witness called by the Government, after being duly sworn, testified as follows:

My business address is Room 906, Kansas City Livestock Exchange Building. I am secretary of the Kansas City Livestock Exchange. I will state in a general way what the Exchange is by reading from page 3 of the book of rules as follows: "The objects of this Association are: To maintain a commercial Exchange, not for pecuniary gain or profit, but to promote uniformity in the customs and usages of members; to inculcate and enforce correct and high moral principles in the transaction of business; to inspire confidence in the methods and integrity of its members; to facilitate and provide for the speedy adjustment of business disputes; to acquire and disseminate valuable commercial and economic information; and, generally, to promote the welfare of the livestock market at the Kansas City Stock Yards." The membership is composed of individuals who are in the livestock commission business

on the Kansas City Stockyards with the exception of those that have retired or are inactive. We have some order buyers that are members of the Exchange. The traders at the Kansas City Stockyards have an exchange of their own. There are some order buyers that do not belong to the exchange. There are two market agencies, the Producers and the Farmers Union which are not members of this Exchange. They are the two cooperatives. There are some independent order buyers but no other independent commission firms. The Exchange in a few days will be [fol. 339] 45 years old. It is my duty to attend meetings and keep the minutes. I have custody of the books, records, and rules and by laws.

Government Exhibit Nos. 9, 9-A and 9-B

Government Exhibits 9, 9-A and 9-B, the same being a printed booklet of the rules and by laws of the Kansas City Livestock Exchange and two yellow slips bearing amendments to those rules, were offered and received in evidence.

Services of the Exchange for which the shipper is charged Hog Dockage: Hog inspection is 20¢ per car and 1¢ per head on drive ins up to and including 20 head when the carload rate applies. There is a charge of $1.50 per arbitration paid by the person calling for arbitration. The hog dockage and inspection is operated in behalf of the shipper for his protection. Inspection comes on all hogs that come to the yards. As I understand it they are inspected generally for health.

Agricultural Development Fund

This is the fund from which the exchange derives its revenues to maintain its office and keep it a going concern. We charge our member firms 10 cents per head per car on all inbound stuff, and 6 cents per car on cattle, hogs, and sheep bought on order and 6 cents per car from brokers on all stuff cleared for traders. The less than carlot rate of collection on brokers, and on our own people, is on the [fol. 340] basis of 6 cents a car, using 36 cattle and calves, or 60 hogs, or 100 sheep, as a carload. The agricultural development work inclules our contributions to and efforts on behalf of 4-H and vocational boys' and girls' work, hog promotion and beef cattle production carried on by the

Chamber of Commerce and the State Agricultural Colleges of Kansas and Missouri, and contributions to prizes for fairs and shows, and occasionally medals for students at the State Agricultural Colleges in short course work. Then we have quite a bit of outlay at times for the work we do in connnection with the State Livestock Sanitary Commission of Kansas. We have never levied any special assessments that I know of for any of these purposes whatever. (Witness was asked to produce figures showing income and expenses for this fund in 1929.)

Radio Broadcasting

We charge five cents per car on inbound stuff for the radio fund. Drive-ins are reduced to a per car basis for this purpose. This does not fall on brokers. We make no charge on purchases of outbound stuff for the radio fund. This assessment is provided for by the amendment to the rules introduced in evidence as Government Exhibit No. 9-a. This assessment was begun on March 1, 1930. The audits of the respondents for 1929 show an expense for free subscriptions to the market paper. That has been discontinued by a rule of the exchange. The market paper expense was not incurred under the supervision of the exchange. That was just an individual firm matter. As I recall it the radio broadcasting assessment was the only [fol. 341] assessment made by the exchange in 1930 which was not made in 1929. I do the broadcasting myself except when I am away on duty. The purpose is to inform patrons of this market as to the state of the market, and all the information that I am able to find that they want.

Transportation Department

We charge two cents per car on inbound stuff on a strictly car lot basis for that fund. We use that fund in the defense of the rights of the shippers to this market, to a just, fair and equitable freight rate and train service. It is also applied in the maintenance or defense of the rates that apply to this market on inbound and outbound and everything pertaining to railway transportation centered strictly in that.

Retirement of Memberships

We charge $3.00 per month per membership for a fund to retire the certificates of membership of deceased members.

They are the personal property of the deceased, and their estates are entitled to cash them in on that retirement. The rules of the exchange at page 14 fix the amount at which these memberships are to be retired. That rule has been in effect since August 1, 1926, and I think 16 or 18 memberships have been retired. They have never been re-issued. We have not made special assessments for anything since I have been secretary.

Assessment for the National Livestock Exchange

An assessment is made on inactive members for contribution to the National Livestock Exchange. The contribution on behalf of active members is made through the gen- [fol. 342] eral fund of the exchange.

Clearing House

Under the clearing house rules the service of the clearing house are extended to all market agencies doing business on the Kansas City Stockyards, regardless of whether they are members of the exchange. Those who use it are charged on the basis of the volume of business which they do through the clearing house. It runs all the way from $2 to $4 or $5 a month.

Other Activities of the Exchange

The exchange is registered as a market agency. I do not know for what functions it is registered to perform. Our exchange does not operate a collection business in respect to claims of its members or their patrons. We handle the fund that is collected for the National Livestock and Meat Board. This is deducted by the market agencies from the proceeds of sale and turned over to the Meat Board if the shipper does not protest. That charge is five cents a car.

We handle the payment of the premiums on the blanket fire insurance policy. The exchange attends to the procurement of the insurance and handles the money. The collections sometimes exceed the amount of the premiums. The surplus is left in the general fund. (The witness was requested to furnish a statement of the surplus for each year during the last five years.)

The exchange does not handle group life insurance for [fol. 343] the benefit of its members. We have our inde-

pendent association for that. It is called the Kansas City Livestock Exchange Employees Association. The members of the association are the members of the exchange, and its officers are the officers of the exchange.

Report of Financial Operations of the Exchange

I just took off the net, since our fiscal year does not run with our calendar year. For the year 1929, the inspection and arbitration on hog dockage had a deficit of $158.42 after its portion of operating expenses of the exchange allocated and charged to it were paid. At the close of the fiscal year of 1930, we had $85,905.22 in the general fund. That is our accumulated balance over 45 years. At the close of the fiscal year 1929 we had $75,150.92 in the fund. We gained about $10,000—$3,000.00 of which came out of sums that had been owing to us for some time. After deducting operating expenses of the clearing house we had $181.60. For the calendar year 1929 our surplus from the collections for fire insurance premiums was $2,071.52. We pay the Hartford Fire Insurance Company 15 cents a car premium on all meat animals arriving on the stockyards. There is deducted from the shipper's account sales 7 cents a car; on drive-in cattle, hogs, and sheep, 1 cent a head up to 7 head, and from there on just the 7 cents or the carlot rate. The difference between the 7 cents a car and the 15 cents a car is made up out of voluntary contributions by the packing plants and the yard traders. I do not have the amount of the contri- [fol. 344] butions made by packers and others to the insurance fund.

Following the fire in 1917, all parties went in under the blanket policy. Each of these people coming in under the policy contributed his share on an agreed basis. I do not know how they arrived at the seven cents per car. Packers contribute just so much flat each month. The 15 cents a car paid to the insurance company is based on incoming cars, and drive-ins reduced to a carlot basis. The coverage is for as long as the livestock are in the stockyards. The minute it leaves the confines of the stockyards it is not covered.

Cross-examination:

I became secretary of the exchange in October, 1925. Prior to that time I was a newspaper man. I covered the markets on several papers that I worked on at different

times. I was editorial writer, and worked on market reporting for the Daily Drovers Telegram of Kansas City for seven years.

Respondent's Exhibit No. 8

Respondent's Exhibit No. 8 is a chart showing the progress of the Kansas City Livestock market, and outlining some of the rules of the Kansas City Livestock Exchange designed to protect shippers to the market.

This vast area here, where Kansas City is the front door of the range country, and the back door to the Corn Belt, is based on the bulk producing areas of the West and Southwest and Corn Belt buying power for stocker and feeder [fol. 345] cattle and eastern order buying power. There was a period of expansion in transportation facilities prior to the establishment of the market here in 1871. The first packing plants were started in 1868, and between the times the market was established in 1871 up until the exchange was founded in February, 1886, the market operated in a sort of unregulated and chaotic way. An Exchange Building was erected in 1871, and during the period from 1871 to 1886, certain customs and habits of trading were being formulated and established, although they were in unwritten form. As the exchange grew and developed, these rules were developed, and the development of the market has grown to such an extent that it has broad duties and privileges that we are glad to live up to in connection with the livestock industry.

Respondent's Exhibit No. 8 was received in evidence.

[fol. 346] The rules of trading have been a sort of an evolutionary process as the market has grown. In the old days all the seriously crippled animals were shot by a humane officer and were sent to the tanks. In 1924 the Kansas City Cripple Association was founded. They made an agreement to take the crippled animals from the yards and from the docks, salvage them, sell the edible portions and make return to the owner. The record indicates that there has been a very material saving. In 1929 they took out 1652 cattle, 310 calves and 770 sheep. In 1929 they paid the shippers $50,404.29. In 1929 the average charge per head for handling cattle was $2.96, calves 87¢ and sheep 54¢ (similar figures for 3 years prior to 1929 were also

given by the witness). The market agencies do not get any return for that service except to encourage their patronage to the market.

No individual member of the Exchange can use the radio for any purpose whatsoever. It keeps down the expenses of the individual firms and takes away the exploitation by a firm of its own affairs. We do not use any market agency's name in our broadcasting. The Producers Commission Association broadcasts independently on its own account. There is no prohibition against a non-member. There is nothing in the trade practice agreement to prevent a non-member agency from sending out the market paper. It is my understanding that there is no prohibition against sending out the market paper at other markets.

Rule 5-A of Article 7 of the rules of the Exchange grew [fol. 347] up out of the commission firms employing men rather seasonally. It simply prohibits hiring a man and paying a contingent salary on the basis of the business he is able to bring in. He has got to pay him a salary. It is designed to protect the business of the individual firms from expenditures which simply involve the accumulation of a volume of business. Men from Oklahoma would come up here who had 7,000 or 8,000 cattle and they would hire themselves out to the commission firms for three or four months for a salary that was out of line with their worth. They could not sell anything. It just became so obnoxious that the Exchange stopped it.

Rule 7 in regard to furnishing meals or lodging is for the purpose of keeping from running up their expenses in buying business. The nature of these rules is to put a commission firm on its merits as a handler of livestock.

We try to hold novelties down to a maximum of 25 cents. That is the interpretation the Board put on section 7 of rule 7.

Section 1 of Rule 8 in regard to the discipline of members is more frequently invoked than any other rule of the Exchange. Recently an order buyer marked up his tickets on his principal in the East and he was expelled.

If I were a livestock shipper, knowing what I do, I would not ship to a market that was not policed by a livestock [fol. 348] exchange and rules. I have never seen the Board of Directors hesitate to inaugurate progressive policies. There are men that are inherently honest in the livestock

commission business and there are men who are inherently dishonest.

Number of Commission Firms

Prior to 1925 when I took over the records of the Exchange the records were somewhat nebulous. I determined the facts with respect to the number of commission firms from the records and these are the minimums. In 1915 there were 67 commission firms, 3 order buyers and 5 brokers; in 1916 there were 64 firms that I could locate positively, 3 order buyers and 6 brokers; in 1917 I found 65 firms, 3 order buyers and 5 brokers. In 1918, 63 commission firms, 6 order buyers and 7 brokers; in 1919, 68 commission firms, 5 order buyers and 7 brokers; in 1920, 66 commission firms, 4 order buyers and 8 brokers; same number for 1921 and 1922; in 1923, 62 firms, 6 order buyers and 9 brokers; in 1924, 65 commission firms, 4 order buyers and 7 brokers; in 1925, 66 commission firms, 5 order buyers and 7 brokers; in 1926, 64 commission firms, 5 order buyers and 7 brokers; in 1927, 62 commission firms, 6 order buyers and 6 brokers; in 1928, 64 commission firms, 6 order buyers and 7 brokers; in 1929, 65 commission firms, 7 order buyers and 7 brokers up until February or March 1930, 60 commission firms, 6 orders buyers and 5 brokers. Since February or March, 2 commission firms have dropped out, one broker discontinued business and one order buyer was [fol. 349] expelled. These figures do not include the two cooperative firms. From 1925 all the figures given represented maximums. These figures that I gave are from the records of the Exchange whose members carried firm permits issued under the rules and regulations. If they were in business part of the year I counted them here. At present we have 262 members in the Exchange, two of which are women and there are at present 35 non-active members of the Exchange. Non-active members are those who have retired and would have sold their membership probably if it had not been for the fact that we carry the group insurance. That leaves 228 active memberships. We got our group insurance policy on August 1, 1926, and from that time on those old fellows began to hold on to their memberships. Since 1920 we have retired 44 memberships for which we paid $180,000. In 1920 we had 303 memberships. Not a single membership has been issued from the

treasury. Practically all of the memberships were active in 1920 because there was no life insurance involved then. The total time of membership for all of the 262 members average- 17.6 years per person. Of course some of them were on the market quite a while before they became members of the Exchange. Of this membership we have 8 who have been members for 44 years, one for 39 years and 6 for 38 years.

Surety Bonds

Beginning in 1919 we compelled our members to take out surety bonds. I am trustee on these bonds and it is a matter of tremendous interest to me personally in relation [fol. 350] to the welfare of the shippers of this market.

The failure in 1919 resulted from adopting a system of remitting by personal checks instead of the individual market agency. That is, doing business on a float, kiting checks. I consider that our bond system is better even than a national bank. In this period of more than 10 years since these bonds were put in force billions of dollars of proceeds have gone back to the owners of livestock without the loss of a single penny and without delay in spite of the fact that there has been a period of somewhat extensive depression at times with consequent bank failures. There was one delay when we were not appraised of the defalcation for two days. We settled it in two hours after we found out what was the matter.

Redirect examination:

In some businesses transactions are nailed down with written contracts. I presume that there is an immense volume of trading done on the floor of the Chicago Board of Trade without written contracts. The same rule applies on the New York Stock Exchange. On the New York Stock Exchange they give memorandum but we have no memorandum here passed between buyer and seller.

In broadcasting sales of livestock, we have given the sales made by the Farmers Union, giving the name of the shipper and the price received. We have not done this in the case of sales by the Producers Commission Association because it has its own service. I would not know how [fol. 351] far the competition among the firms goes here at this market, unless they overstepped the rules of the

exchange. They would not be human beings if they did not show some competitive effort. I find that the rules in regard to telegraph, telephone, meals, gratuities, and things of that sort were adopted pretty early, and that they have not changed them much. There has been only one rule repealed since I have been down there, and that was with respect to certain provisions for group livestock insurance.

[fol. 352] J. H. MERCER, a witness, called by the Government, after being sworn, testified as follows:

My address is State House, Topeka, Kansas. I am the Livestock Commissioner of the State of Kansas, and am secretary and general manager of the Kansas Livestock Association. I appear here at this hearing representing the Kansas Livestock Association which is a mutual organization made up largely of farmers, livestock producers of the State of Kansas, with some outside membership in four or five other States. The Kansas Livestock Association has since 1914 been interested in anything that would have to do with the betterment in the interests of the Livestock industry. Every year since the reorganization in 1914 they have passed a resolution directing its officers to keep in touch with the transportation and marketing costs of the industry. At a recent meeting, on the 12th of November, a resolution was passed directing Mr. Jesse Harper, who is president of the organization, and myself, as secretary, to appear at this hearing and take any part it was thought advisable to take.

I have been engaged in the livestock business as a farmer and feeder of meat animals since the early 90's, in Kansas. Over that period, I have been shipping to the Kansas City market very largely. I have made a few shipments to St. Louis, St. Joseph, and Wichita, and one or two to Chicago, but most of my business has been on the Kansas City market. Seven years of that time I devoted mostly to the buy-
[fol. 353] ing, selling, and shipping of cattle and hogs to that market. In 1916 or 1917, I sold out my farm interests and have not handled livestock regularly since that time. I have handled livestock along in small quantities, and I have a little herd of cattle on hand now. In the days when

I was actively engaged in the business of feeding and marketing livestock, I was on the market an average of once a week. On several occasions I have sold livestock on the market myself. I am at the Kansas City market quite often and keep in close touch with it all the time. I went to St. Joseph and Wichita with my livestock, but did not go to St. Louis or Chicago. I bought a good many cattle and hogs at Wichita. I have been on the Omaha market during business, and have been on the Chicago market. I don't think there is any general difference as to the conduct of the business on these markets I visited, but there is quite a difference in the qualifications of the individual livestock salesman and buyers. We have not much difference as far as the salesmen are concerned or their methods. Of course, a big market like Kansas City has more well established plans or methods of handling livestock than a smaller market, but they have their firms that are outstanding, the same as in most any line of business. It is my opinion that there are firms of lesser ability on those markets, that is, there are outstanding firms at Kansas City and also firms of lesser ability. There is probably some little difference here from Chicago, Kansas City is one of the largest feeding cattle [fol. 354] markets in the United States. We have a variety of cattle that comes to this market, considerably different from what goes to Chicago, although Chicago is a little different from here with respect to some other branches of the cattle business. Many more of the canner kind of cattle go to Chicago from the dairy breeds than come here. We have a greater variety in different classes of cattle that come to Kansas City than they do at Omaha. For a good many years the Omaha market was the recipient of a larger aged animal than we have here. Conditions are changing now. I would not say that it is more difficult to sell cattle at Kansas City, but there are elements that make it different. There is more sorting to be done than I think would prevail at Omaha. It is my opinion and the opinion of our organization that there should be a reorganization of the exchanges tributary to our State's livestock business. We believe that it should be done in the interests of the industry and efficiency, and perhaps economy. The only competition now that prevails at our public market is the competition of efficiency and service. We feel that there should be some authority that would assume jurisdiction in removing the unnecessary number of commission firms. I am not going

to suggest the number of firms that should prevail at the Kansas City market. It should require some study and investigation. If the number of firms were reduced, consolidated, or whatever plan might be devised, it would increase the efficiency of the service. Our association did not [fol. 355] join the American National Livestock Association and other organizations in filing the complaint with the Secretary in 1922, but it did start in on a conference program to establish a sales agency program at this market. We started in to go over with the commission firms' representatives at the conference the correction of certain irregularities and the changing of exchange rules. Stipulation was made to submit the matter to arbitrators, and we have not taken any specific action with respect to undertaking a plan of that kind since then. It is our opinion that the Packers and Stockyards Act covers the situation to the extent that they could come to an agreement and approve a program that would be binding. We undertook to establish a program of this kind at the market at Wichita. It was contemplated that the 16 or 18 firms there would be consolidated into five or six firms. We accomplished that down to seven firms, providing that those firms would be protected against the competition of people coming back into the business after the consolidation. We could not do that, and the Secretary of Agriculture got an opinion from the Solicitor of the Department that it could not be done under the law.

There should be fewer people in business, and there would be fewer people by consolidation. In such a consolidation, the interested commission persons and the producers who would be interested in such a program would in time be able to establish firms made up of the highest class of men who know the business. I am not casting any reflections on any one engaged in the commission business. I [fol. 356] know that we have what we call small firms which have outstanding sales agencies connected with them. I am personally acquainted with men who are engaged in the selling of livestock that have never made an actual study of the value of the product they are selling. They are not competent. We maintain that a sales agency should be well equipped, and should have as much knowledge of the value of the product he sold as the buyer of the product. The packing industry will not employ buyers who have not had

years of training and been apprentices under the best and most skilled men.

After the program is established of standardizing sales agencies they should be protected, and no sales agencies should be admitted on that particular market unless there was a proper showing made that they were needed there. If there were a reduction in the number of firms and people who are engaged in the livestock commission business at Kansas City, it is my opinion that they could still handle the business and very much better than it is now being handled. I would say that at least 30 or 40 firms could handle the business.

In my duties I am given a free hand to interest myself in any project which affects in any way the livestock industry. I am subservient to the organization as an official of the State. The Kansas Livestock Association names the Livestock Sanitary Commissioner. We work forces of the State and the organization right along together, and we [fol. 357] advocate many projects, such as better breeding, better health conditions of livestock, the transportation problem, and the marketing problems.

Cross-examination:

We have not been on record as opposing or suggesting any change in the rates established by arbitration. We have not taken any action other than send our annual resolutions to the Secretary. No specific mention has been made of rates or charges. We approve anything that would better the conditions of the industry. I would approve the cancelation of memberships and the issuance of no new memberships by the exchange. I would not approve the practice of registering a market agency in the commission business who had confessed misapplication of proceeds belonging to shippers, and had been expelled from the exchange. I know my association would not. We feel that the Packers and Stockyards Administration should take into consideration the conditions on a market, not arbitrarily establish any policy until a thorough study and investigation are made of the business; that all the rules of exchanges and cooperative organizations should be considered, and as a result of policy and program established on that market. Our association disapproves of a policy, if such a policy has been pursued, of permitting registra-

tion of any one who may apply to do business. As I understand it now, the department or the exchanges do not prevent the opening of new firms at any of these public [fol. 358] markets, providing one makes the application and can furnish the necessary bond.

In addition to expert sales agencies, there should be men of executive ability and competent employees of the various kinds required.

On behalf of my association I stipulated to leave the complaint to arbitration, as a result of which the present rates were established. We base our conclusions on this proposition of establishing and protecting those in the business along the line of our banking law of Kansas. I know of no questions that were ever raised that the existing rates were not legally and lawfully established. It is my understanding that they were approved by the Secretary of Agriculture. Rates were also fixed at Chicago in that proceeding. At Chicago the minimum and maximum were 17 and 21 dollars per car on cattle, and at Kansas City they were 15 and 19 dollars per car. I have heard statements from shippers that they felt that transportation and marketing costs were too high. We have not submitted any complaint as far as our organization is concerned.

The membership of our organization handles at least 75% of the meat business of our State, and I would say conservatively that they ship 85% of that output to this market. The packing and distributing of the products are indirect costs that we know little about. We know what the yardage charge, commission charges, and transportation charges are. Just what part of the consumer's dollar goes back to the producers, I do not know much about those [fol. 359] things. It is our opinion that the cost price of the raw material is in most all instances below what it should be compared with the cost of the finished product. It would be interesting to our association to procure an analysis of those percentages and a trend from year to year, and the relation of those percentages would have some bearing on the question of the reasonableness of the several costs.

I am president of the Kansas Livestock Show at Wichita, and I know that institutions of that kind are of great consequence to the industry. I think the giving of a thousand dollars a year or a little more to the 4-H Calf Club Boys and Girls in vocational education is wisely expended.

I know all about the service in connection with the tuberculosis eradication work of the Kansas City Livestock Exchange. The service in Kansas is done under my direction and in cooperation with me as a sanitary officer. I do approve this service which is of considerable benefit. They are engaged in the eradication of contagious and infectious diseases. As far as I know of the methods of remitting proceeds of sale I see nothing wrong with them.

Qualifications of Salesmen

We have submitted a proposition to the Administration and also to the Federal Farm Board in regard to the creation of a committee to pass upon the qualifications of the sales agency. The range in value is much higher than it [fol. 360] used to be. I feel that the sales agency of meat animals is highly specialized, or should be highly specialized, and the best of agencies furnish the market. We have got them and we ought to have something thrown around all of that to eliminate these inefficient people from interfering. The responsibility of a salesman has increased as this range of value has widened out. The buying has always been pretty well specialized. The packers buy different from what they used to, as far as cattle especially are concerned. I think it is pretty well established that these inland central markets for many years have been the objective points for feeders wanting cattle for feeding purposes. The great bulk of our cattle are purchased at these markets, in these sections that produce feeding cattle. That is what attracts the Eastern people to this market and to St. Joseph, more than to any of these other markets for their feeding cattle. They can get any kind of an assortment. I think as long as we have this plan of marketing that the scheme should be followed, and for the protection of the producers it is very essential to have orderly markets. The Kansas City market is the basis of the price fixing authority in this entire unit of the country. A wide variety of climatic conditions and feeds produces a variety of grades of livestock, particularly cattle.

Redirect examination:

The representatives of the four large packers, Armour, Swift, Cudahy and Wilson, purchase the larger quantities

[fol. 361] of the finished product on this market than any other unit of any size and, of course, they are all trained and skilled men. The salesmen who come in contact with these skilled packer buyers should be equally skilled.

Interest and Exchange

My viewpoint would be that any charges of any kind or character having to do with the commission business, reflecting in any way direct to the commission charge itself, should not prevail if it could be eliminated. If Fred Olander would accommodate me by buying me a bunch of cattle and shipping them out to me, and sending me an account sales, investing his money from two to five days, and that privilege would reflect itself in the commission he charged me, then it should be eliminated.

For example, ninety-five per cent or more of the people of my State endorse almost every project conducted by the American Royal, yet if any of the expenditures of that institution reflect itself in the yardage charge down there, it should be known. Therefore, if a charge or a credit reflects for or against the commission charge, then it should be eliminated if it is possible to do so.

Solicitation

I am familiar in a general way with the solicitation of business done in the country. I think personal solicitation is done largely to get shipments. It is an advantage to the producer and shipper in a way. The livestock com-[fol. 362] mission merchant is in personal contact with the business every day. He may come out to my feed lot to see my cattle, and he has seen a like kind of cattle selling right along. If he knows his business, he can tell me approximately what my cattle will bring. That is first hand information to me that is useful. When he did come to see me, naturally, he would ask me to ship my livestock to his firm. Of course, there is some expense entailed in it. I feel sure that personal solicitation is of far greater consequence than their bulletin solicitation or advertising. I do not know what they charge up as expense, but I know it is expensive to them. I think it is an advantage to the producer.

Recross-examination:

Anything that has to do with, or reflect in any way any connection with the commission charge, should be well known to everybody. I have known commission merchants that have come to the country and made purchases on their own initiative. I do not think that it should reflect anything as to commission charges. That is a speculative proposition. If you, as a commission merchant, maintained a large working capital in order to accommodate me, as a country buyer, and by reason of that fact the charges you made got to me indirectly as a charge of the business and was reflected in the commission charge, I think it should be eliminated. I think that the proposition of accommodations to buyers can be so eliminated that the purchaser would have the money or its equivalent if he so desired. All banks receive drafts, deposit them as cash, [fol. 363] and charge no exchange on them in most instances as I understand it. I know some banks would not give you credit for your drafts, they would wait until a draft is paid. The general rule of business down here is that the commission companies who know their customers will buy the product and ship it to them and send them a bill. They don't make a draft. If the purchaser instructs them to make a draft, I presume they mostly do it. If that is included as a part of this commission charge, and it can be eliminated, it ought to be. I think it could be because you can demand the cash if you want to. Buyers could bring in the cash or a letter of credit or something of that sort. If I did come down here to this bank and deposit a draft that was issued to me, or deposit a letter of credit, in all probability that bank would not give me a checking privilege until it had time to investigate or return that draft to the origin. I believe in the theory of requiring bonds of market agencies.

[fol. 364] B. C. Biggerstaff, a witness called by the Government, having already been sworn, was recalled to the stand and testified as follows:

Redirect examination.

These truck men try to get a back haul to minimize the cost of the inbound haul, and it has extended our trade

territory on livestock. The increase in hard surface roads has had the effect of increasing the volume of livestock trucked in to the Kansas City market. It has opened up country and fostered other markets that have not been very prominent. It has put an emphasis on places like Springfield. There is a small stockyard at Springfield. Since I have been secretary the question of the Government making regular audits of the books of the market agencies at the Kansas City market has never come up. There has been both a reduction in personnel of the firms engaged in business and some people have gone out of business. We started out the peak of 1930 with 60 member firms operating under permits of the Kansas City Livestock Exchange, under its own rules, not counting the cooperatives and independents. We revoked the permit of one firm and the other firm discontinued business and went into the employ of another firm. We had one broker to fail and that reduced the number to five. That made a reduction in 1930 of two commission firms, one order buyer, and one broker. The reduction in number of firms has reduced the number of people who are operating as members of the Exchange. [fol. 365] It has reduced the working force there and the work has centered in fewer people. I would prefer that everyone draw his own conclusion as to whether that has been advantageous to the men who are left on the market or the shippers.

[fol. 366] M. Y. Griffin, a witness called by the Government, after being duly sworn, testified as follows:

My address is Merriam, Kansas. I am in charge of the local office of the Bureau of Agricultural Economics, Livestock, Meats and Wool Division, United States Department of Agriculture. The office is located in the Exchange Building. I have been the head of that office eleven years. I have been with the Department thirteen years. The local office is purely a service organization the purpose of which is to gather and disseminate livestock marketing information. There are eleven people in my office.

A livestock market reporter is assigned to each branch of the market, namely, cattle, hogs and sheep. As soon as the trading opens they gather the actual sales and the market trends by direct contact with salesmen and buyers.

I cover the sheep market. The office is opened at 5 o'clock, when the estimating clerk calls the various railroads for a report on the livestock to be delivered for the current day's work. That estimate is released at 6 o'clock. It is posted on a bulletin board in the lobby of the Exchange Building, transmitted on leased wires connecting all the principal livestock markets, supplied to the commercial telegraph companies, broadcast by radio, and made available for anyone interested. The leased wires of the division connect all the principal livestock markets and the estimates of receipts and market prices and trends are exchanged several times daily between this market and the [fol. 367] other markets. We receive reports from other markets shortly after 6 o'clock in the morning and that information is also made available on the bulletin board here at Kansas City. We start out to gather actual market information soon after 8 o'clock. We get information as to actual sales as they are made and the information is obtained with respect to the various classes and grades of the same species of livestock. Our office has the definite grades and classes quite well standardized and they are generally well known and used in the trade. We make our first broadcast at 8:07 in the morning. That is the estimate of the receipts at Kansas City and other important markets. The reports are broadcast directly from the office through cooperation with the station KMBC at Kansas City. We broadcast for five minutes. The broadcast covers pretty thoroughly eastern Kansas, Missouri, southern Nebraska, southern Iowa, parts of Arkansas, Oklahoma and Texas. The information which we give to the telegraph companies is known as the "C. N. D. reports." It is available to the customers of telegraph companies at a considerably less rate than the regular message rate. This is a method by which the telegraph companies supply their customers with market information, not only livestock but other market commodities, at stated periods throughout the day. That is distributed to the telegraph companies pretty generally by 6:30. The next broadcast is at 9:30. That includes the opening hog market at Kansas City and the opening tone of the hog market at Chicago. That is a five minute period. The trends of the cattle and sheep market are not [fol. 368] established at that time. We give out information with respect to cattle and sheep at 10 o'clock on the

leased wire and the press wires. There is a broadcast period at 11:42, and the last one is at 2 o'clock. The development up to that hour on the complete Kansas City Market is disseminated, giving market trends on cattle, hogs and sheep, with prices, and also the Omaha and Chicago markets. In the C. N. D. reports service the receipts figures or estimates are available shortly after 6 o'clock, the opening hog market at 9, the opening cattle, sheep and hog market at 10, the complete market about 11:15, and the closing markets at 12:30. The information which we furnish covers the field rather thoroughly. We give the top prices and the range of sales on the various grades and weights of hogs and grades of cattle. In giving out information we do not identify any shipment as to ownership. Information is marked up on the bulletin board after the first record in the morning is made of incoming receipts, at 9, 10, 11 and 12:30. The Kansas City market is posted as it develops, and reports from other markets covered by the leased wire are also posted. We get out a daily mimeographed report on the market conditions, receipts, and the trend. It is mailed to a list of people around 3:30 P. M. each day. It goes to farmers, producers, and feeders. The only requirement is that somebody needs it and asks for it. We have a mailing list of around one thousand. Patrons living in Kansas and Missouri are the heaviest of the mailing list. These reports include information from other [fol. 369] markets that are taken from the leased wire reports. However, it specializes on Kansas City. The Kansas City office has no meat market report. We include in our report information in regard to the dressed meat market in Boston, Philadelphia, New York and Chicago. That information is taken from the leased wire twice daily. That information is also disseminated by radio. We have a separate report for the information on the dressed meat market. Our mailing list for that consists chiefly of retailers, jobbers, packers and numerous producers. An advance estimate of the receipts for the next day is released at 12 o'clock noon. We get reports from the various railroads of the stock that is in transit and due to arrive the next day. We also supply information to the newspapers and the press association. The press association report is supplied around 11 o'clock each day, and again the closing report about 12:30.

Cross-examination:

My work does not have anything to do with crop conditions or anything of that sort. It is devoted solely to livestock market reporting and we disseminate reports of wool and meat. I think supply and demand go into the prices today. By demand I mean the outlet for the products. At Kansas City it consists of a demand from the various packers, shippers, order buyers and speculators. We have records of the receipts of livestock that are purchased either in the country or other markets who have their plant at Kansas City. It is entirely probable that if they derive [fol. 370] any substantial amount of livestock in that way it has some effect on the amount that the packers buy on the open market. We disseminate the information in regard to the receipts of direct shipments to the stockyards. I do not know what proportion of the directs is received on the stockyards and what proportion moves otherwise direct to packers. The number received outside of the yards would be considerable larger than those inside of the yards. The figures as to the total number received at Kansas City direct from day to day are available but they are not published daily. I can procure the information in regard to the direct receipts and the purchases by packers on the open market and will do so.

Sheep and lambs are divided into prime, choice, good, medium, common and culls. The locality that they originate from or the locality in which they are fed is frequently mentioned as a guide to interested people in the country.

The condition of the sheep or lamb determines whether it is going back to the country for stocker and feeder purposes or whether it goes for slaughter. The weight of the lamb at some seasons of the year is an important factor in determining its value and the fact that it carries a fleece on its back or the fleece has been removed also makes a difference in the price. When wool is extremely high the character of the fleece will make a difference. There is a diffrence arising out of the age of breeding ewes. We divide [fol. 371] breeding ewes into yearlings to three years olds, and three year olds and up.

GEORGE G. CROSSAN, a witness called by the Government, after being duly sworn, testified as follows:

My address is 465 Livestock Exchange Building. I am manager of the clearing house at the yards which is maintained by the Kansas City Livestock Exchange. I have been manager for a little over two years. The clearing house is a place for the exchange of bills, for checks, really. The commission men and members that belong to it bring their checks and their bills, packers' tickets and any other tickets that they might have to be distributed there to the members. Each member has a box. The Producers Livestock Commission Association and the Farmers Union clear through the clearing house. There are people who clear through brokers and they are not members but the broker is. The clearing house is a clearing house for the entire market. It opens at 8 o'clock and closes at 5:30 on Monday, Tuesday and Wednesday. On Thursday and Friday it closes at 5 o'clock and Saturday at 12:30.

Some days most of the bills will come in before 2 o'clock, other days more will come after 2 o'clock. It depends upon the run of cattle and the buying of them. More bills come in on Tuesday than on Monday even though the peak run is on Monday a lot of times. On Wednesday I don't believe [fol. 372] there would be very much difference. On Monday there aren't any bills that come in up to 11 o'clock. I have a box in the door and sometimes there will be quite a number of bills to distribute that were put in the night before.

Cross-examination:

When trading is slow it has a tendency to slow up the presentation of these bills at the office of the clearing house. On Friday we receive most of the bills before 2 o'clock. That is because the receipts are lighter. The market agencies want to get their bills out just as quickly as possible every day. The reason so many bills are carried from Monday over to Tuesday is that the livestock is not weighed until after too late to get the bills in. The buyers buy late. I have noticed during my experience on the market that many market agencies are working at the time I leave the yards. They could not get along without working in the evening. I think that is because livestock cannot all be weighed up until late in the evening.

Redirect examination:

When I speak of market agencies I mean commission men, traders, and brokers who deposit their bills at our office for collection. They nearly all of them have their offices in the same building that I do.

I do not know how long the people in the various offices keep going after I leave at six o'clock. I do not observe all of them, because some of them probably would not be [fol. 373] working. On busy days it would be very rare if the people left the offices of the market agencies before 5 or 5:30 in the afternoon. I have been there long enough to know the firms that are prompt. Some of them will pay just as fast as they get their bills, others will wait till the time and then bring their checks in a lot of times around 3:30.

[fol. 374] J. C. VANCE, a witness called by the Government, after being duly sworn, testified as follows:

My address is 260 Livestock Exchange Building. I am office manager of John Clay and Company, a market agency engaged in the livestock commission business. The main office of that company is at Chicago, Illinois, and the business here in Kansas City is a branch. My general duties are overseeing the general office work and particularly the loan business.

I have charge of the work of the keeping of books and records and sending out bills and correspondence. We may get a load of cattle, hogs, or sheep, particularly cattle, that may be on the yards a day or two before they are sold. During that time we have been presented with the freight bills and feed bills and numerous other items that naturally go with that transaction. When a carload of cattle is received in the stockyards we get a notice of that from the yardman, who comes to the office early in the morning with a complete list of what has come up to that time. He comes up from time to time as the arrivals come in during the forenoon. We have a form that we set these shippers down on, showing their names, addresses, kind of livestock, and banking instructions. If a shipper wanted us to advance him currency at that immediate time, we make a notation of that on this sheet. Any other special requests or instruc-

tions from the shipper are noted on this sheet. (Witness here reads a number of letters from shippers asking to be [fol. 375] kept posted on the market and to be furnished a market paper.)

We simply tell them that we have discontinued sending out the daily market paper gratis, and we tell them that we would be very glad to send to him our own market information. The head office of John Clay and Company issues a market paper at Chicago. The branch offices furnish that office with lists which they desire that paper sent to and it is mailed out of Chicago. The distribution of that paper does not come under the recent Exchange rule. It is regarded in the same class as circulars gotten out by individual firms, only it is a great deal broader in scope. Ordinarily freight bills are presented to us by the Western Weighing and Inspection Bureau. Those freight stubs are part of the railroad companies' way bills, showing the origin of the shipment, the shippers name, the car number and initials, consignee, contents of the cars and the minimum weight with the rate, and a stamped notation showing the fill allowance that a particular car is entitled to.

A car of livestock coming into the yards is fed and watered before it is sold and weighed. To cover that additional weight they allow 500 pounds a car in some instances, and 800 pounds a car in other instances, depending on the length of time the cattle have been in the car in transit. From that freight stub our man refers to that daily record sheet in order to see if he has a record of the particular car. The bill is then passed on to the account sales man. The stockyard company bills us for their charges at the same time they bill us for the railroad com- [fol. 376] panies' freight charges. We may have collected these yardage charges twenty-four hours before we are billed for them.

Freight rates are paid to the stockyard company and it pays the railroad companies. We are not billed for stockyard charges before the livestock is sold.

After the sale of a load of livestock the scale ticket is presented to our office in duplicates as soon thereafter as possible. In order to expedite matters we figure those tickets as promptly as possible, one man figuring the original ticket and another man the duplicate ticket, using calculating machines as a rule. Then a bill to the purchaser is

prepared, which we try to get to the clearing house as soon as possible in order to receive payment from the purchaser on that day. From the duplicate ticket the account sales is made up and the same speed is used in trying to get that account sales out on the same day on which the livestock is sold. We have a scale ticket with two or three drafts on it. In case of a single ownership car weighed in three drafts, those drafts might be on one scale ticket or they might be on three different scale tickets. We do not have the tickets covering the full car before we bill the purchaser. One purchaser might buy all three drafts, or there might be three different purchasers. If some of the drafts were large they would be weighed on the high line scales whereas individual animals would be weighed on the jack pot scales. If the cattle were sold at the same time to the same pur- [fol. 377] chaser the probabilities are they would appear on the same ticket, but if they are sold to the same buyer at three different times they are more apt to be on a separate ticket. We bill the purchaser as fast as the tickets come in. The scale ticket shows whether it is an original or duplicate ticket. On the ticket appears the name of the Kansas City Stockyards Company, the number of the scale, the registered weight, the name of the seller, name of the buyer and the account for which the purchaser has made the buy. They have separate tickets for cattle, hogs and sheep. The weight is written out and then the prices marked on by the seller. The owner's name and any marks of identification are written on the ticket. The salesman also marks on the ticket whether the livestock is of the steer or cow class, or whatever it might happen to be. The ticket is dated and there is a place provided for the weighman's name or initials. There is also a place to make explanations and state the amount of money.

The salesman places the price of the animals on the sales ticket and designates the kind of animals. The office people apply the price to the weight and make the extension. From that the bills *is* made out and we take it to the clearing house, providing the purchaser has a box at which to receive these bills. If it happened to be a country purchaser the bill would be retained by our office and direct settlement would be made with the country purchaser. We might have the account sales made up and the money in the bank to the shipper's credit before we got the payment

[fol. 378] of that bill back from the clearing house. As fast as the full contents of the car are assembled at the office, we start making the account sale. The account sales provides a place for the date and the name of the shipper, the number of the account sales, shipping point, post office, name of purchaser, classification of livestock, weight, dockage, price, amount the total, and the gross proceeds. There is also a place for the car number, the weights on which the freight is assessed, the rate, the amount of charges, charges outside of actual freight, such as bedding or feed en route, yardage charges, service charges, hay charges, bedding charges, corn, inspection, brand inspection, fire insurance, transit insurance, National Meat Board deduction, commissions, net proceeds. Then there is a place to show the disposition of the proceeds. We have a long form and a short form of account sales.

Government Exhibit No. 10

Government Exhibit No. 10 is the form of account sales used which is prepared in duplicate, one copy of which is retained as our record. Whereupon Government Exhibit No. 10 was received in evidence.

Government Exhibit No. 11

Government Exhibit No. 11 is a copy of a form of account sales used for cooperative shipments. It is made out in duplicate. Whereupon Government Exhibit No. 11 was received in evidence.

[fol. 379] Government Exhibit No. 11-A

Government Exhibit No. 11-A is a small form which goes with the form shown in Government Exhibit 11. It is a small form that takes care of the individual owners in a cooperative shipment. Wherever the large form is used then these little forms accompany the big master sheet. One of the little forms would be used for each shipper in the cooperative shipment. It does not contain all the information in Government Exhibit No. 11. It pertains to the specific owner of the livestock represented by that form. It just shows the proportion of those charges that are applicable

to the contents described on the form. I do not think that our firm makes a duplicate of this small form.

Whereupon Government Exhibit No. 11-A was received in evidence. Government Exhibit No. 11-A is used in those cases where we have charges that are outside of the usual stockyard charges, such as manager's commission, sinking fund, and other home charges. Where we do not have those home charges we use the regular form identified as Government Exhibit No. 10. Government Exhibits Nos. 10, 11 and 11-A are the only forms which our company uses in rendering account sales to shippers. Government Exhibit No. 11 is used very infrequently and for very complicated shipments. In the majority of cases our firm follows the usual custom of making remittances by depositing in the bank to the credit of the shipper. If we remit by check that remittance is made in the form of a bank cashier's check or [fol. 380] perhaps by what is known as Chicago or New York Exchange on some bank. As a rule we use personal firm checks in remitting for drive-ins. We usualy follow the owner's instructions in that respect. When we are requested to send by check, we send a personal check when the amount is small.

The account sales may be made up and mailed out the same day the sale is made, and that time may be after banking hours, in which event the deposit would have to be carried over and made in the morning. In the meantime the account sale has probably reached the shipper by the time, or very nearly around the time, the money will go into the bank. We do not have much complaint about our bills being paid promptly. We endeavor to get these bills into the clearing house in time so that they will be paid on the day the sale was made. Frequently sales of stocker and feeder cattle are made after 2 o'clock. In such cases the purchaser has until 10 or 10:30 the next morning to pay for those cattle. In the meantime we have rendered the account sales and got the money in the bank. That frequently works a little difficulty on our bank account, necessitating our calling on our Chicago house for help in the way of funds.

John Clay and Company makes a business of making loans to livestock producers. A good many of the loans are handled right through our office here. We keep a record of these loans on our loan records.

All packers pay on the scale ticket except Wilson and [fol. 381] Company, and they pay on a bill. When we receive these scale tickets stamped in that way we deposit them in the bank and our account is immediately credited with the amount of money. When we sell to an order buyer or trader, he usually gives a check. If it is a check on the Kansas City bank we get immediate credit for it. If the check is drawn on an out of town bank, we get credit for it immediately but the bank has a process of analyzing your account in which they show that item outstanding against your account until it is actually paid in funds that are available in Kansas City. One of the purposes of that is to charge some interest on our account. They charge interest when those items exceed our realized balance. They do it whether it is a profitable account or not for the reason that they do not allow any credit for the days on which you have a realized balance. They render a statement at the end of each month showing the book balance for each day of the month. In an opposite column they show the total of the outstanding items. In another column they show the daily realized balance. That may be a debit or a credit. Where the total of the credit balances exceed the total of the debit balances they charge interest on the debit balances. They allow no interest on the credit balances.

A good many times we make remittances to the shipper before we have made up the account sales. It is not an unusual occurrence to put an amount of money in the bank [fol. 382] to the credit of the shipper or have it wired for his credit before anything has been sold. That is the nature of an advance. No interest is charged to our patrons for those advances. The final remittances awaits the making up of the account sales. The Kansas City Clearing House Association furnishes us with the Kansas City correspondent bank, who is entitled to receive credits for certain out of town banks. As a matter of fact an out of town bank might have two or three Kansas City banks that would be entitled to accept deposits for their credit. From our bank we obtain what is known as a country deposit slip, which is made up in triplicate, showing the date, by whose direction the deposit has been made, who made the deposit, the amount, the name of the Kansas City Bank, and the name of the bank to which credit is being extended. We have three banks at the stockyards, and they are designated by

other Kansas City banks as being their stockyards representative. The uptown bank may let any one of the three banks at the stockyards accept these credits for them, and the original of this deposit slip is mailed out by the stockyards bank to the bank to which the money goes. The names of the stockyard banks are the Drovers National Bank, Stockyards National Bank, and Interstate National Bank. Not all of the Kansas City banks have designated a stockyards depository. These three stockyard banks clear on each other. Unless some later explanation is to be made, when the remittance has been made and the account sale mailed, the transaction is closed.

[fol. 383] We have never made any study of the time involved in the various functions of office work. We have three employees that devote their time to making account sales, account purchases and remittances. One man devotes practically his entire time to making up account sales and the work incidental thereto. Another man works almost exclusively on the purchases. Another man handles the remittances. They give practically all their time to that work and the ordinary performance of the bookkeeping, indexing, figuring tickets, making deposits, and checking up remittances. In the accounting end of our work we have four people and a fifth one we use part of the time. We have five people in the stenographic and advertising end of the business. Referring to the audit of John Clay's books, made by the accountants for the Department of Agriculture, on Schedule No. 2 thereof the three employees who make up the account sales and get out the remittances are Nos. 23, 24 and 25. Man No. 25 is not the same one we had when this audit was made. Since that time there has been a man on full time. A different man acting in the same capacity. His salary is $25.00 per month over the salary shown for Man No. 25. These three men are assisted by other-. I frequently lend my assistance to them. The salesmen do not help in this work.

Cross-examination:

John Clay & Company is a partnership. Clay, Frank H. Connor, C. A. Kleman and Allen F. Wilson of Chicago, and [fol. 384] Charles G. Smith of Denver, are the partners. They devote their time and energy actively to the conduct of the business as it is conducted on several livestock

markets of the country. Mr. Clay is not as active now as he was years ago. He is at the up town office every day in Chicago. I think Mr. Clay organized his livestock commission business in Chicago and Omaha in 1886, Kansas City 1894, Denver in 1895, Sioux City in 1899, St. Joseph in 1901, and other offices at subsequent dates. Mr. Clay has been connected with the livestock industry for fifty-five years. He is generally regarded as one of the best informed men on livestock matters in the United States. All the other four partners were connected with the firm when I started to work for it twenty-eight years ago. They were not all partners at that time, but they were either partners or employees. I think the connection of these men with the business and the time which they devote to its executive management and maintenance of the business is of great value. There is no item of expense shown on our books to represent that item. I would not want to put a valuation on their services. The financial resources and credit of John Clay and Company used in granting of credit and financing of livestock for stockmen has a tendency to increase the volume of our business.

A good deal of my time is taken up in connection with the loan work and the details of it. I am constantly referred to about matters pertaining to the general office work.

We have a freight auditor to whom we pay 5¢ a car on all [fol. 385] the carloads that we sell and this man takes our account sales, checks the freight and when he finds an overcharge he files a claim for it. He handles the whole thing and refunds to the shipper without charge for that service. We file a good many claims for loss and damage to livestock in transit. We handle the less complicated and simpler ones. We sometimes have loss and damage claims that we turn over to claim attorneys who handle them on a contingent basis of 15 per cent. I would not say that we handle a very large amount ourselves. There is no charge for that service. We are frequently requested to furnish a bank or loan company with a copy of account sales which we do on consent of the owner. We collect fees for various associations. Here is a brand inspection tally on which the inspection fee is $1.40 which we are expected to collect on a shipment. There are 121 cattle and calves on this tally sheet, 14 of them are branded. This brand inspection pertains to the 14 branded cattle. On this sheet are instruc-

tions from this brand inspector to hold the proceeds of certain cattle branded until he releases the cattle thus held, either by affidavit of ownership or bill of sale, or something of that kind.

Respondents' Exhibit No. 10

Respondents' Exhibit No. 10, the same being a copy of the brand inspector's tally to which the witness had previously testified, was received in evidence. We usually follow the brand inspector's instructions with regard to weighing out [fol. 386] certain cattle or a certain brand that he claims might belong to somebody else. We render separate account sales for these and usually hold them for a reasonable length of time for the establishment of ownership. We might pay those proceeds to the man who shipped the cattle or to the secretary of the association which the branding inspector represents. These associations do not give us any bond. Different states have different systems of handling those things and our office force must keep familiar with the different methods of the different states. In Wyoming and Colorado the brand inspectors operate under state laws. In the other states brand inspection is conducted through voluntary associations.

One of the special services that is incidental to the business is the matter of a night yard man who receives at the chutes all late arrivals. He is there all night from the time our men are off duty until they go back the next morning. He yards cattle during the night and feeds them if the shipper wants them fed. That service costs us 50¢ a car.

There is a radio broadcasting service which costs us approximately 5¢ a car. Then we furnish horses in connection with our buying business. The buyers and the salesmen all ride and naturally you couldn't expect the shipper to walk when your own men ride so it has become a custom, and has been a custom for a good many years, that horses be hired from the barns. The cost of that horse hire amounts to [fol. 387] $2.00 a day. You will see a buyer start out in the morning with maybe one or maybe seven or eight men riding behind him looking for cattle. John Clay & Company do not have that expense at other markets. We had three horses of our own in 1929. Sometimes a man who has cattle here for sale will ask us to furnish him a horse. If we do not have a horse of our own available we hire one. It is

pretty generally conceded that a horse is necessary in going in and out among western cattle. You could not go into the pen of a load of horned western cattle on foot with any degree of safety. The yards run north and south in length and it is a considerable distance from north to south. The buyers sometimes want to shop around and see all the cattle. The area which constitutes the yard is not a square.

We get out market reports and letters which go out seasonably and our own publication of livestock markets, which is a general review of the markets on which we are represented. The market report is sent to those shippers who request it. There is a service in the way of furnishing transportation to and from nearby feed yards. I have in mind the arrival of a shipment of cattle or sheep at the Prospect or Morris feed yards. The shipper will come to our office and want to go out in the yards. In that case we send one of our men out with him. It is about 10 miles to either station and we make a flat allowance of $2.00 a trip to our employees who use their own automobiles to go out there. Frequently we get a telegram from a man saying that he expects to arrive at the feed lot on a certain day and he [fol. 388] would like to have one of our men go out there and sort the cattle. Sometimes we send two or three men out depending on how big a job he has ahead of him. In connection with appraisal trips, we have a schedule of mileage that we allow an employee, depending on the kind of car he has. These expense accounts are turned in and sent to our financial office once a month. We want to keep these expenses down as far as we can consistent with good business.

Hazards

Last Monday morning we sold 9 cattle. Before we sold them another commission man came to our office with a letter from a broker stating that he had a mortgage on those 9 cattle. A little later he showed us a letter from a lawyer saying he had a mortgage on the cattle. The shipper who brought the cattle in did not seem to know much about it. We went ahead and sold the cattle and had them weighed out very carefully under brand inspection supervision. We naturally held on to the proceeds and still have them. The matter was referred to our attorneys in Chicago. There might have been some liability if this competitive commission firm had not furnished us the information about the

mortgaged cattle. Our firm does not carry mortgage and theft insurance. We did at one time. We were informed by our head office that arrangements had been made with certain attorneys who would handle all those cases now. They were the attorneys for the Hartford people who formerly wrote this mortgage and theft policy. That repre- [fol. 389] sents one of the services which the Chicago office renders to the branch here at Kansas City. No doubt that is taken into consideration at the end of the year in the adjustments of the various office expenses. That particular expense does not show in this audit made by the Government.

There is a hazard every day in connection with accepting payment for purchases on out-of-town banks. First there is the question as to whether the purchaser has the money in the bank and secondly whether the bank itself is in good sound condition. There is also the hazard of buying cattle on order by correspondence. When the cattle get to the destination the man might refuse to accept them and stop payment on his check. Situated as we are we divert this load of cattle to some other market or we might be able to turn it to somebody nearby. If they come back to us we have that extra expense of freight and shrink. There is a liability in the free transportation which we furnish to these feed yards. One of our employees had his automobile demolished in an accident and we allowed him the cost of putting the old car back in shape on the purchase of a new car. If any one of the four or five cattle men with him had been injured there would have been personal damages. We do not carry any compensation insurance with respect to our liability to employees for injuries in the course of their employment. We are not under the compensation law but take our own risk. If an employee gets hurt while in our service we take care of his expenses in the way of medical attention and hospital and at the same time pay his salary. We do [fol. 390] not carry any public liability insurance to protect persons from damage not in our employment. It is my understanding that if a steer should escape and injure someone up town we would be our own insurer.

A rather important liability is the matter of figuring our own freight charges. If we make a mistake in freight or feed it is up to us to collect it from the shipper or pocket the loss.

There is the hazard of losing cattle while they are in the yards. Ordinarily you would file a claim against the stockyard company for it but the probabilities are you would not get anything out of your claim. In spite of the precautions mixes and losses do sometimes occur.

The branding, dehorning or vaccinating charges are usually paid by us and charged to the purchaser on his purchase bill.

I have printed slips which we get out in connection with cooperative or plural ownership shipments and which are filled in in the country, giving the information necessary to the handling of the livestock. This sheet is labeled "Cooperative Department, Disposition of Returns" and it provides space to show the name of the consignor, his post office, bank instructions, manager's commission, sinking fund, and miscellaneous charges. It is ruled so as to provide for information in regard to the home weights and identification of the livestock. That information in connection with the information that goes into the office from the yards is used in making up the account sales. I have a [fol. 391] similar sheet here showing a shipment in which the manager of the association requested us to prorate and send the returns to a bank. That means that we have to make a separate account sale for each owner. It describes 10 owners which will require 10 account sales and it required 21 different weighing drafts. This was caused by mixed ownership and different classifications. On the previous sheet there were 3 different owners of hogs and 10 different owners of cattle in the car. I have another account sale covering 3 drive-in cattle which were sold to one buyer at one price. Only the charges for yardage, insurance and commissions were collected. The commission was $2.25 and the gross total proceeds $197.25. That is the very simplest form of account sale. The next account sale involves the same number of cattle weighed in 3 different drafts at three different prices on which there were dray charges at 25¢ a hundred. That would be next to the simplest kind of an account sale. The commission charge there was $2.25. The next one covers a drive-in shipment of one cattle and 10 hogs. About the only difference in this is that there was a charge for a bushel of corn and an inspection charge which the two previous account sales did not have. This sale was made by a cattle man and by our hog

man. Here is another drive-in shipment covering 21 head of cattle and calves sold in ten different drafts, ten different prices, hauled in by two truck men, each one of whom collected dray charges which our men calculated. It shows hay charges and transit insurance collected for the Hartford Insurance Company. It also shows that the shipper [fol. 392] drew $10 in currency and obtained a check for the balance of the proceeds. The total commission was $12.55.

I have three different illustrations of a straight load, all taken on the same day, and at about the same time. One load contained 38 cattle and was sold in two operations. The carload sold at one price, with one head out at a different price. There were five deductions on that account sale. The commission was $19.00, and the gross proceeds were $2,336.60. The next account sale covered a jack pot load of cattle, consisting of 40 head weighed up in 20 drafts. There was one additional calculation for feed in transit. The value of this load was $1,201.42. The commission charges were $24.00 on that load. The other load consisted of 32 cattle, belonging to three different owners. There were four different drafts, and three different account sales. These cattle arrived on Sunday, and were fed by our man on Sunday and on Monday. There were three different prorations to make, on the freight, feed charges, and bedding charges. The proceeds went back to each individual owner's account at his bank. The total commission was $21.25. Another account sale shows a total of 253 head of sheep arriving in two single deck cars, on which the double deck freight rate was applied on what is known as the "feed-in-transit" billing. That means that there were two calculations of freight charges. There were bedding charges and feeding charges at McFarland, Kansas, of $785.50. In this load there were five different classifica- [fol. 393] tions of sheep.

McFarland, Kansas, is a feeding station about 150 miles from Kansas City. We deduct the feed charges with the freight charges. Our commission was $20.00. The gross proceeds of those sheep amounted to $1,384.69.

Pasture Contracts

We handle quite a bit of work in leasing of pasture. That is done on request of a shipper or livestock man of good financial reputation. Cattle move from Texas, New Mexico,

and Arizona up into the pastures of Kansas in the spring of the year. A man will notify us that he wants grass for a certain number of cattle. We dicker with a man who has the grass, and make what is called a "pasture contract," which is signed by the owner of the cattle and the pasture man.

Respondent's Exhibit No. 11

Respondent's Exhibit No. 11, same being a printed form of pasture contract used by John Clay & Company, was received in evidence.

No charge is made for the execution of this contract. It is a service that we consider incidental to our business, and we have no assurance that the business will eventually come to us. However, we have that object in view when making the contract. Frequently a man will wire us to meet him out there, and we will go out and travel over a good, wide area looking at pastures. Frequently at the request of the [fol. 394] owner of the cattle we will have the freight bills come into our office for payment to see that the proper amount of freight charges has been assessed on livestock moving to the pastures.

Last March a man at the Amarillo convention asked Mr. Reid to get grass for 100 cows, and he told him he did not want to hear anything more from him until he sent him a check for the cows in the fall after they were sold. He got his grass, and we sold the cattle for him, and sent him the money. We follow these pastures from year to year and know how heavily they have been grazed. It is of importance to know that the water supply will be available, and another thing to take into consideration is the integrity of the pasture man. Cattle moving in from these pastures usually come in carlot shipments of single ownership, moving perhaps more than one car at a time, and containing cattle of fairly uniform grade. We collect the pasture charges from the account sales, and remit to the pasture man.

If occasionally happens that our men will look over cattle in the country and appraise their market value, and then they will move direct to purchasers off the pasture. In such cases we get no commission. From 1907 to 1909, the pasturage cost around $4.50 to $5.00 a head. This summer the pastures ranged from $9 to $11 a head in Kansas.

Comparison of Costs

Office rent in 1908 amounted to $105 a month. At the present time it is $260 a month. Telephone exchange [fol. 395] service in 1908 was $18.92. Now it is $64.50. Part of that increase is due to the fact that we now have telephone- in our selling alleys. Our toll bills in 1908 were running around $40.00 a month. In 1929 our telephone bills amounted to a little over $1800.00 for the year. In 1908 barn rent for horses was $15.00 a month, and now it is $22.50. Our city occupation license was $15 a month, and now it is a hundred dollars. (Witness detailed comparison of costs between the years 1909 and 1930.)

There has been a substantial increase in the salaries and wages to the hired help. There has also been an increase in the number of people employed to handle the business in a certain alley. In our cattle yards in 1908 we had three salesmen, a man who sold the fat steers, one who sold stockers and feeders, and one who sold butcher stuff. In addition to those now we have a calf salesman and also a man who acts as fat steer salesman when the regular man is out of town. We were making a good deal more money in 1908 or 1909 than we are now. By that I mean net returns to owners for their services in the business.

Working Capital

Ten thousand, five hundred dollars, would not begin to cover the capital actually used in extending the necessary credit and an amount reasonably necessary to protect against contingencies, emergencies, and hazards in the business. There are many days when our outstanding purchase items will exceed that amount many times over. There have been several days when we have had overdrafts [fol. 396] with our Chicago office that exceeded $100,000. An item of working capital amounting to no more than $10,500 would be grossly inadequate.

Redirect examination:

There is no compensation in the way of salaries for the partners of the firm charged up to our office here. The expense of getting out the market paper is not all borne by the Chicago office. A certain proportion is charged to all of the offices of John Clay & Company at the various

markets. I do not know on what basis it is prorated. Under the heading of general organization and advertising expenses, there is included, in addition to the market paper, the expenses of the general auditor who makes three or four trips a year around to the various offices. Whatever remuneration the partners of John Clay & Company get out of this branch will come in the way of profits, rather than any stated salaries. I have never worked in the financial office at Chicago, and I do not know the basis on which they make the settlements among themselves. Mr. Clay started small, and built up this business to what it is at the present time. (Counsel for respondent concedes that the commission business of John Clay & Company started from a small beginning and it developed later according to the capacity, ability, and energy of those who operate it.

Livestock Loan Business

John Clay & Company charge the regular commercial [fol. 397] scale for interest on loans made on livestock. It is decidedly unprofitable at the present time.

Where there is a cost in addition to the time cost on a check received in payment for livestock, we make an additional charge.

It was not very many years ago that we never had to worry about collecting inspection fees for any association. They collected their own fees. Then they got together and devised this means of collecting their fees and passed it on to the market agencies.

We have not suffered any personal injury claims by reason of injury to automobiles going to and from the feed yards. I presume the reason we do not carry any liability insurance is that it is more economical to carry our own risk. It is infrequent that a steer gets out of the stockyard and goes uptown. I do not know that it has been established that the steer which did the damage at 10th and Main Streets actually got out of the stockyard. It does not happen very often that we lose livestock in the stockyards. I do not know that we can insure against that risk.

There is an item appearing in the audit of deductions which I think covers the losses which we sustained last year in connection with buying cattle on order. Another one which I mentioned is reflected in this audit under the heading of bad debts, which represents a loss we sustained on

account of paying a draft in advance of the arrival of the shipment to market. I remember a loss which we sus- [fol. 398] tained about 1918 or 1919 of some $4,500 in connection with the selling for some stolen sheep shipped from New Mexico. Since that time I do not recall any losses in regard to stolen sheep and stolen livestock. About that time the Hartford Fire Insurance Company came out with this mortgage and theft policy and we have been subscribing to that form of protection since then.

John Clay and Company handles quite a large volume of stocker and feeder cattle. The big runs come during the months of September, October and November.

All expense in connection with pasture leasing appears on our books in this office. The big bulk of the leasing is attended to by our manager. I would not be able to state how much of his time he devotes to that. The cattle that come to the leased pastures are largely range cattle. We have not segregated expense incident to pasture leasing.

On Schedule No. 2 of the audit of our firm the people who attended to the loan business were Nos. 1, 22, and 9. They do not give their exclusive time to the loan business. No. 22 gives more time to it than the other two. The loan business is pretty active during the spring and especially during the fall, continuing pretty well through the winter.

The amount of commissions collected and the value of livestock bought and sold for the years 1923 to 1929, inclusive, are as follows:

[fol. 399]

	Amount of commissions	Value of livestock bought and sold
1923	$162,646	$14,342,462
1924	153,370	14,450,485
1925	150,451	16,652,745
1926	153,278	16,902,371
1927	138,325	17,182,684
1928	145,781	19,751,877
1929	148,669	20,317,697

The net return for 1923 was more than in 1929 by $9,400. I do not have the figures for 1922.

I have no opinion as to the amount of capital necessary for the conduct of the commission business alone at this branch.

Recross-examination:

The negotiating of these pasture contracts is undoubtedly an aid to this market. It tends to increase the volume of commerce in livestock as it passes through the Kansas City public stockyards.

That business is for the most part all straight carloads and all one ownership. The more of that class of business you can handle the more you are going to reduce your unit costs. It is the class of business, in respect to cattle, that suffers the greatest degree of exposure to the influence of direct movement from the owner to the feeder. There is more competition on them at the yards.

Working Capital

There are a number of days during the year in which we have to draw on our Chicago account to protect our account [fol. 400] here at the bank, and those amounts may vary from $25,000 to $150,000. I recall one day this year when I had our Chicago office transfer $200,000 by wire. Of course, our business does not require that much cash working capital every day in the year, and when not needed in these peak movements the extra capital is employed productively in the loan business.

Demand for the cattle is the most vital factor in bringing livestock to the market. Anything that would interfere with or lessen the competition or the movement of buyers, or the volume of business, would be detrimental to the movement of livestock through the market.

A good deal more money is employed in the livestock loan business than is needed for working capital in our commission business, for the reason that whatever funds the firm has they are handled out of the financial office at Chicago.

[fol. 401] Edward W. Elliott, a witness called by the Government, after being duly sworn, testified as follows:

I am engaged in the livestock commission business at the Kansas City Stockyards. Mr. Swain and I are partners in the firm of Elliott, Swain & Company. This firm handles all species of livestock other than horses. We have the sheep sold by a party who sells for a number of different

firms. I sell the hogs. This firm has been in business 11 years. I have been a partner in some commission firm for 27 years. For about 6 years prior to that I worked as a yard man. I went to work in the yard in 1894 as a hog salesman. My services as a salesman were unsatisfactory and an arrangement was made whereby I assisted another firm in weighing livestock and that firm sold my hogs. Later I went to work as a helper to the senior member of the firm who was selling hogs. I think I worked 6 or 7 years before I took charge of the hog department. We have a man who goes to the chute pens and drives the hogs over to the commissionmen's pens. If a representative of the commission house is not there to receive the hogs the stockyard employees will remove them from the unloading chute to the most convenient yard and lock them up. Then we send our yardman there to get them. There are men who make it a practice of taking charge of night arrivals for various firms for so much per car and we have arranged with one of those parties to take charge of our hogs that might arrive in the night. These people charge 50 cents per car. My firm receives very few shipments by rail and such consignments as we have are in by 10 o'clock. The [fol. 402] greater per cent of the hogs coming to the market are in by 10 o'clock.

My firm drives its truck-in hogs from the north yards through an underpass under the Missouri Pacific and Union Pacific tracks and into what is known as the main yard. Truck hogs come in about 50 per cent at night and 50 per cent in the day. Most of those that come in the day come in the early part of the forenoon.

I arrive at the yards about 6:30. I have one hog yardman who assists me. He gets there about 4:30 or 5:00 o'clock in the morning. He moves the hogs that have come in during the night to our division from the receiving gate. When I arrive at the yards, he and I sort and grade the hogs and then we feed them. The first thing I do when I go to the yards is to inform myself as best I can as to receipts at other markets. I take into consideration the provision markets and try to form some conclusion as to that day's market. Being on the market each day I understand the trend and demands from the various buyers. We try to shape our hogs to be attractive to that demand. Frequently we will have a consignment that does not require

any sorting but most usually it does. Often in one truck load of hogs we will have as many as three grades. Each carload of hogs arriving by rail is put in a pen to itself. I have received consignments of hogs by truck amounting to one hundred head. On the 10th day of this month we received at the Kansas City stockyards 7,200 and some few head of hogs by truck. There were 695 owners in that day's run and 545 trucks. That is ordinarily as it runs along. When we have one head by truck we yard it in- [fol. 403] dividually as near as it is physically possible to do. If conditions are crowded we have to put him with another odd hog or so. We mark him so that we can identify him. We have 14 pens assigned to our firm. We borrow from our neighbors. When we sort the hogs we turn them out in the alley and the yardman holds the gate and lets them through. We sort for uniformity and according to market demands. Besides the pigs there are three or four grades for which we sort. Each owner's hogs are handled as a unit and are placed in separate pens. We do not sort for breeds. The stockyard company puts the feed in the pens. The packers buy a greater per cent than the order buyers but not to any great exten. We handle some stock hogs. There are two firms operating in the yards that handle stock hogs. The buyers come into our alley, when the market opens at 8 o'clock when conditions are favorable to buying. When the market is slow we have to go out and solicit the buyers. The buying is usually done between 8 and 12 o'clock.

Each of the four large packers has on an average two buyers in each division buying different classes of hogs.

It is unethical for more than one buyer for the same grade of hogs to be in a pen at one time. An identical market never prevails throughout the yards on any market day or at any one time. The market may be very active in a couple of alleys south of me but that man would fill his orders in there and pretty soon the market would ease down. A salesman has to watch these conditions and have [fol. 404] some idea as to what those orders are that are coming in. A salesman may come out and try to get the buyers to come to his alley. We usually try to have all the corn before the hogs that is necessary. After the hogs are sold they are driven to the scales. Sometimes my yardman drives them and sometimes I drive them myself.

Hogs are weighed practically the same way as cattle. We have had as high as 20 drafts from a car shipment and 5 from a truck shipment. Some shipments would be weighed in one draft.

The hog yardman will make out bills and run errands and whatever may come up to be done. The extra help on hogs listed in the audit of my firm is the expense of 50¢ a car for hogs yarded during the night.

Cross-examination:

Before I came to the stockyards my only experience with the livestock industry was the feeding of livestock in the country. I had lived on a farm. During that time I was frequently on the market. It was my experience that I could not handle the selling of hogs to the satisfaction either of myself or my employer when I started in. In so far as weight and quality were concerned I considered myself a good judge of hogs at that time.

My pens are about a quarter of a mile from the drive-in unloading chutes. They are in the north portion of the [fol. 405] hog house. Our yardman does not always drive each owner's hogs separately from the drive in unloading chutes. He has instructions to mark small bunches with shears and put three or four bunches together. It would entail too much work to drive each bunch separately. Our yardman has been working for me 12 years. An inexperienced can could not drive hogs from the drive-in chutes to our pens. I do the sorting as to grades.

The price spread of hogs that reach the market and the top grades on the market under present market conditions is $2 a hundred. The range of value would be normal in the bulk of sales. When I first began selling hogs it was a rare case that we removed anything from a car of hogs. They were yarded, fed, watered, sold and weighed as they arrived. At that time packers sorted their hogs after they were bought or sorted them on the rail at the packing house after they were butchered. They do not buy their hogs mixed any more. We have to grade them but not quite so closely as for the shipper trade. When the demand is very active we can get a better average price for the owner by not grading quite so closely and compelling the buyer to take some of the poorer grades in order to get the better ones.

The change in the practice of buying by the packers has increased the work and responsibility of the salesmen. Hogs coming to this market originated in Missouri, Kansas, southern Nebraska and a few from Arkansas and northern Oklahoma. In the early spring we get some Texas hogs. There is some differential in price resulting from the [fol. 406] origin of hogs.

Respondent's Exhibit No. 13

This is a classification of the different grades and qualities of hogs out of which variations in market value arise. It is not in keeping with the classification the Department of Agriculture uses altogether.

A stocker and feeder hog ranges from 50 to 160 pounds. Then there are classes by weight such as choice, medium and poor.

Whereupon Respondent's Exhibit No. 13 was received in evidence.

It ordinarily takes two men to do the sorting. If a salesman does not have a yardman, he must exchange work with someone else. We do help one another.

After I have sorted the hogs I will take the buyers into my alley, one by one, and show them what I have to offer. I proceed in this way until I feel that I have exhausted my efforts and that I have obtained the best possible price. I dispose of them unless I have reason to believe that the packers are going to be good buyers, and then I will hold them for a later market. The order buyers usually precede the packer buyers on the market. It is my personal opinion that packers buy after the order buyers in order that they may depress the price and that way reflect the price on their purchases in the country. The market price fluctuates from day to day and during any one day. I have observed a fluctuation in one day of one dollar a hundred.

[fol. 407] Appraisal Trips

I do not go into the country on appraisal trips. Mr. Swain is occasionally called to the country on appraisal trips for cattle. I devote my entire time to the market, correspondence, and personal contact in the yard. Mr. Swain uses his automobile very often on these appraisal trips, and he does not charge the expense to the office.

Change in Character and Volume of Business

We never did a large business. A number of years ago we handled a great many more hogs than we do at this time. They were coming in carlots from a greater distance than now. Our hog trade territory largely come- within a radius of 150 miles of Kansas City and now what proportion of it we have been able to hold arrives by truck.

The Livestock Exchange

I was a director of the Exchange for about sixteen years. It has been our sole aim to put into effect any new rule and regulation that in the judgment of the board would be practical and of benefit to shippers. The Exchange adopted a rule prohibiting string selling.

The salaries shown on our audit by the Government is simply a division of the earnings of the year. It does not represent in any way what we agreed upon between ourselves as an adequate or reasonable compensation for our services. I devoted my entire time to this business during [fol. 408] the year 1929 and have for the last thirty-four years. I have lived economically and I have not accumulated any sort of fortune in the business. I have had revenue from other sources.

Direct Buying

Direct buying of hogs in the country by local packers has affected the volume of our business. It has not affected our particular business very materially due to the fact that hogs in the zone around Kansas City come to us by truck. The country buying operations of packers are carried on at points further removed. Armour and Company is receiving hogs by truck at the Mistletoe Stockyards.

Contact with Customers

I write my own letters. I do not employ any stenographer. Sometimes we pay interest, but we do not require so much working capital on account of the fact that we remit by check for truck-in hogs. We do not do any loan business. I do not think that the volume of receipts or of business indicates or determines the efficiency of operation. Sometimes advertising and wide-spread contacts with the

trade will bring business irrespective of the relative degree of efficiency. Personal care and attention to the shipment of livestock is a very vital factor in obtaining the highest possible dollar. In 36 years I do not recall an incident where shippers have complained about the amount of commission charged. I have noticed salesmen for smaller firms having greater difficulty in disposing of their livestock than a salesman for a larger firm, but I attribute that to the [fol. 409] personality of the men. Where personality is the same, volume does not cut any figure.

Redirect examination:

We receive our hogs Mondays, Tuesdays, Wednesdays, and Thursdays, as a rule. From the middle of October to the middle of January hogs receipts are heavier than at other times. Occasionally there will be liberal receipts in May and June.

Twelve or 15 years ago when I was in the firm of Lennon, Elliott & Company, we handled more hogs than we are handling now. I sold all the hogs then. We probably handled twenty-five per cent more than we do now. Our business has not been affected as much as some others, because we keep our business close to Kansas City. Our business comes largely from within a radius of one hundred miles. I have been asked a number of times if I would be interested in taking an interest in another firm, whereby my earning capacity would be greater. I was never offered a salary. I prefer to remain as I am rather than go into another firm.

Mr. Swain sells all of the better cattle and some of the others at times. His assistant sells truck-in cattle and butcher stuff. Our cattle salesmen do not have a sufficient quantity of cattle but what they can keep fully posted on one, two, or three different grades that they may have to sell. If the volume were greater it would necessitate a division among salesmen. My patrons think that I can sell hogs just as efficiently as if we had a salesman for the various grades of hogs. I think I am handling all that I can handle and get the proper results. I can dispose of an unlimited amount of hogs, but when I go to selling them [fol. 410] and obtaining the very best possible results for my patrons, I have my limitations. I know that there are salesmen in the yards who sell more hogs than I sell. I take it that they are good salesmen.

Our little business comes very uniform. I do not remember any especially heavy day the past year. I think the boys had 125 trucked hogs yesterday. Monday, as I recall, it was something like that. Sometimes it goes above 200 a day. About a month ago I had 286 hogs.

Recross-examination:

In my judgment volume can have the tendency to decrease the efficiency of salesmanship, due to his natural limitations. There is no expense in obtaining the business of traders or maintaining contact with them. I believe that traders would be willing to pay the higher commission if they were given the preferred attention that we give regular shippers.

Redirect examination:

There are extremes in each direction which would affect a man's efficiency. There is a slight variance among salesmen. I never show "seconds" in connection with my fresh hogs. My firm does not spend much money for advertising, and it does not do much soliciting. Our business comes to us because we are able to satisfy our patrons. There are many firms that get as many truck hogs as my firm and there are some that get many more.

[fol. 411] Recross-examination:

The reason I do not go to the country is because of my established acquaintance, as well as my selling efficiency. That acquaintance has built up during a period of 34 years. I contact those men every 90 days with a personal letter. I get in touch with them over the telephone and give them advice in regard to their hogs. Our business would diminish if we did not have this established acquaintance. The dimunition in the number of hogs handled does not affect the competency of a salesman. The more time and effort he has to attend to them the better results he will get.

Whereupon the witness was excused.

[fol. 412] JAMES R. HENDERSON, a witness called by the Government, after being duly sworn, testified as follows:

Direct examination:

I am the office manager for the Moffett Livestock Commission Company, 546 Livestock Exchange Building, Kansas City, Missouri. I have been in that office about 17 years. Prior to that I was cashier of a bank. My firm is a partnership, consisting of two partners. We have an exclusive steer salesman, exclusive butcher salesman, and exclusive hog salesman, and the partners both buy and sell anything that comes to their hands except hogs. We have two regular yardmen and two people in the office. One of our men works part time in the yards and part time in the office. We have an extra yard man beginning about the first of August until the first of the year. We generally use him several days each week. This particular man works for us exclusively. Our regular yard men usually work in the cattle alley, but occasionally will help out in the hog yards. Our salesman generally handles the hog business himself. If our boys are busy in the cattle yards, he will trade off with some other firm. We do not have a large hog business. Our business is gradually running to the truck business more than carlot business.

I have complete charge of the office in ordering all supplies, attending to all banking and remittances, writing market letters, and keeping the books. The other two em-[fol. 413] ployees in the office assist me in anything that comes up and when I am not there they take my place. We have frequent personal visits from shippers. It applies to the carlots more than the trucked-ins. We handle all classes of cattle. These cattle begin to arrive at the market any time after midnight up to eight o'clock in the morning. If they arrive before six o'clock in the morning our night man will receive them and yard them in pens, for which he receives 50 cents per load. Our salesmen will have to be on the job generally around six o'clock in the morning. When the tickets come to the office we try to have two people figure against each other. One takes the duplicate and one the original, and figures the ticket. A bill is then made with a clearance, which is a title order. When we sign that order we are behind those cattle and guarantee the ownership of them.

I can illustrate from an account sale which I have here the work done on a plural ownership consignment. This consignment contained 18 cattle and 53 hogs, and there were 21 different owners in this car. The same procedure was followed in yarding, feeding, selling, and weighing this shipment as I have previously described, but necessarily it took more labor. The tickets were all figured in the office as described before. The account sale was made up on a form covering two sheets, showing the owner's name, following the entry of each species of stock sold. The net proceeds were determined, and then the amount due each [fol. 414] of the 21 owners was prorated. This is quite a lengthy and an exact operation. A master proration sheet was filled out with the name of each owner, the gross amount of the sales, the prorated expenses, and the net proceeds. After that sheet is filled out, we have an account of sale which we call a prorated account of sale. We make one for each owner, showing to whom the stock was sold, the number of head, kind, weight, dockage, if any, price, total amount, prorated expenses, net proceeds, and where the proceeds were to be placed. In this particular case it involved the making of 22 separate account- of sales. There is also a special freight rate which applies to mixed species of livestock. These complicated rates sometimes cause us to make errors. After we enter the weight on a bill, the railroad generally allows a fill allowance of 500 pounds for a certain distance, and 800 pounds for a longer distance. We take that off of the weight, and figure on the net. We return that bill to the Western Weighing Association, and they check the rate and return the bill to the stockyards company, which makes up a bill including all of our freight for the day before. They send us that bill, and we check it back with our account of sale.

The truck men take out a policy with the Hartford Fire Insurance Company, guaranteeing them against loss of any kind, and they leave one of those slips with us. We collect from the shipper and remit the premium to the insurance [fol. 415] company. That policy insures the farmer against loss while the livestock are in the truck. The truck charges were 60 cents a hundred on this particular consignment from Osceola, Missouri. The average truck rate runs around 40 cents a hundred, and after they pass a hundred miles it goes up to 60 cents.

Nearly every consignment of trucked stock calls for a separate check. They do not deposit much in the banks, and they ask us to mail them a separate check. I have here an account sale for a shipment of 34 cattle in one carload where there were plural owners, and we had to figure 18 different accounts. However, we did not make a separate account of sales for these different owners. We just marked the shipment according to the marks on the livestock. In case of that kind, if the shipper is not there himself, he will send us a letter giving us the markings on these cattle. Our salesmen and yardmen have got to take that sheet and sort out the cattle. It also requires a great deal more time and more care and checking in the office. Oftentimes we do not dare to start an account of sale until the yard man and the salesman can get in there and check the tickets and see that they are marked right. Compared with a simple account sale the work is five fold as great.

The salesman then comes to the office and gives us information in regard to the ownership of the livestock. As between the two plural ownership consignments to which I referred, it probably took an hour longer to make out the [fol. 416] account sales in the case where we prorated. We use a Burroughs calculator in figuring tickets, but we do not use it in prorating.

People come in to be entertained and ask about the markets, and my time is taken up a good deal in that way. I handle most of the details in the office. I prepare all the market letters. During the past season we sent about eleven hundred letters a week, and there have been times when we have sent out as high as three thousand of them in a week. We have a record of every shipper that ever comes to the office, and we keep track of those that seem to be active in the business. If a shipper does not make a shipment within a year or two we generally drop him off the list. We keep in touch with shippers also by personal correspondence.

We do not do newspaper advertising to any great extent. About three or four times a year we generally have an ad running in some of the papers. We use novelities, such as books and pencils with our name on them, and give them to the shipper.

Mr. Moffett, a partner in the firm, is a very large land owner, and has a number of ranches. He does quite a

heavy cattle business of his own. He has a large wheat ranch. He spends considerable time on these ranches when it is slack in the commission business.

The other partner, Mr. Baker, spends most of his time here in the commission business. He has some investments that he looks after outside of the firm.

[fol. 417] We do not receive enough sheep to pay for a separate salesman. We turn our sheep over to a regular sheep salesman on the market.

I would not say that either one of the partners sells many cattle during the course of a year. They employ specialists to do that work, and they see that it is done right and help, if necessary. They buy the cattle which are purchased.

In addition to the owners there are three non-owners listed as selling and buying cattle. No. 3 is our butcher salesman, No. 4 our steer salesman, No. 5 is a combination buyer and office man, No. 6 is our hog salesman. No. 7 is our head yardman, No. 8 is our extra yardman, No. 9 is the office manager, and No. 10 is extra clerical work in the office. No. 7 does anything that is to be done by a yardman when he is not busy meeting trains, yarding, watering, feeding and looking after cattle in a general way. Our general yard help sometimes helps down in the hog division when he is not busy with the cattle. According to the audit our firm spent $110.33 for extra help in the hog division. No. 5 used to sell our calves but he devotes his time now to see that the cattle are fed, watered and weighed and then he has a few customers that he buys for.

In addition to Mr. Moffett, Mr. Baker, Mr. Stockton and Mr. Metz do appraisal work in the country. They apportion the work according to the location of the trip. It depends upon whose customers are to be visited. They do not aim to [fol. 418] go around to see all their customers in the course of a year. We might hear of a neighborhood where there are quite a few cattle on feed that would be going to market soon and they would go out to investigate and see what was in the country. If one of our customers living there wants us to appraise his stuff we will go into the neighborhood. Those firms that keep regular solicitors out all the time will go where they think they can get the business. Our firm does not do a great deal of soliciting. When they go out to appraise cattle for a customer he might tell them about a

neighbor who has got some and he will go and look at his cattle and solicit his business.

We generally try to have someone attend the larger meetings.

I said it was as difficult to handle one calf as it was a carload but it is just as easy to bring a carload as it is to drive one calf. It is just as easy to sell 20 steers as it is to sell one calf and sometimes it is easier. If you have a carload of fat cattle and a packer comes in and wants them you can sell them in two minutes. You may haggle with this one calf for half an hour or half a day. The ticket for 20 steers is no larger than the ticket for one calf. It is really more work than it is for a carload of cattle. We pay just as much attention to one calf as we do to a carload.

Whereupon the witness was temporarily excused.

[fol. 419] JOHN W. MURPHY, a witness called by the Government, after being duly sworn, testified as follows:

Direct examination:

I am a livestock salesman for the Bowles Livestock Commission Company which is a corporation doing business at the Kansas City market. It is a branch of the Chicago office. There are 10 or 15 stockholders of which I am one. My firm handles all three species of livestock. We have the sheep sold by a firm who makes a business of selling sheep. I sell most of the fat steers. I also sell stocker and feeder cattle. We have two salesmen selling steers in the spring and summer months of the year. I generally handle fat cattle. In the fall of the year my end of it is principally on the stockers and feeders. Mr. Hopkins also sells fat cattle but a good deal of his time in the fall of the year is devoted to the buying of stockers and feeders. Our butcher salesman sells fat steers in the yearling line. That is the class of trade that will go to the butcher buyers or buyers for packing companies. They may be steers of a kind that fall under 700 or 800 pounds. Mr. Martin confines himself practically altogether to the butcher cattle. Mr. Crumb handles calves but we also use him a great deal as a weigh master and a yardman. A man who starts out to be a salesman usually begins with calves. Our butcher

salesman also handles the heifers and stock cows in the cow department. Mr. T. L. Bowles is manager of the office and does no active selling. He looks after quite a good deal of pasture. He does office work and in the fall of the year he [fol. 420] does some soliciting. I look after quite a lot of this pasture business. We handle quite a fair volume of that business in the spring and fall. I go to the country now and then but my solicitation is confined mostly to requests to come to the country. I don't make much of a habit of going to the country just harum-scarum. Mr. Bowles and I were both kept exceptionally busy this past spring on pasture work. I venture to say that for five of six weeks during the early movement I was out practically half the week.

When I am through in the yards I go directly to the office. In the fall of the year I have been at the office from 5:00 in the morning until 10:00 at night. In the summer I imagine I am there from 6:00 or 6:30 to 3:00 or 4:00 in the afternoon, with the exception of Saturdays. During the fall of the year I put in from one to two hours in the office each day but it will not amount to that much at other seasons.

Mr. Crum looks after a good deal of the "jack-pot" weighing and sells the calves. Mr. Martin sells some of the calves and mostly the butcher class of cattle. He also works in the office looking after account sales and correspondence. Mr. Sloan is our only hog salesman. We have an assistant over there with him who works in the office in the afternoons. He is not a salesman but he assists in the yard work in the forenoons. I imagine Mr. Sloan puts in more time in the office than I do because he helps a good deal on the books. He does a little soliciting now and then [fol. 421] but it is mostly on request.

Mr. Conn is the bookkeeper and cashier. He devotes himself exclusively to the office work. Then we have a stenographer who devotes all of her time to office work. In 1929 we had a yardman who spent most of his time in the cattle division. Mr. Bowles' son was there for six or eight weeks during the summer. Mr. Brandom is senior yardman and he spends most of his time in the cattle division. We do the office work on sheep received by our firm. Our best run of fat cattle is in the spring months and then again in the fall months. The heavy run of

stockers and feeders begins about the first of August and runs until the holidays.

I know of one instance where we had 15 cars of cattle and 22 head was the largest amount belonging to any one man. Those cattle had to be classed and weighed as they were sold and weighed according to the different brands belonging to the individual owners. It is probably easier to handle one car of cattle all of one kind whether they are stockers and feeders or fat cattle than it is a shipment such as I have mentioned. The selling might require just as much time. It depends upon the demand and the quality in flesh. As far as the office end of the work is concerned there would not be much difference. Most of the stockers and feeders come from Texas, New Mexico, Colorado and western Kansas. Over a year's time I would say probably more of them would be of single ownership consignments. We get some consignments of more than one car. The largest consignment during the past year I [fol. 422] would say was composed of 15 cars. That is an exception nowadays. In the fall of the year for three months we will have quite a few 3, 4, and 5 car shipments.

Pasture Contracts

One day we got a wire from a party asking me to meet him at a point in Kansas. He also wanted to make a loan of $150,000 on 2500 head of steers. We got in touch with the people that could handle this loan and wired him we could make the loan arrangement and that I would meet him in Kansas. He came up there in his car and I met him. We drove for three days looking at different pastures. About 10 days or two weeks later I met him at Wichita and we drove another three or four days and then made arrangements for pasturing the cattle. We were in hopes that we would get those cattle to sell when they came back this fall. That is what pasture arrangements are generally made for. We do not charge them anything for that kind of service except that we naturally expect those cattle back on the Kansas City market. I spent a week or ten days working with this party and Mr. Bowles spent a week. Eventually wet get a little less than one-third of those cattle. We have had probably eight or ten such deals as that. No charge is made for that work. The man who is seeking the pasture does not reimburse us for our expenses.

Salaries of Owners

At the annual meeting salaries are specified for the fol-
[fol. 423] lowing year. We have no open drawing accounts. The directors determine what the salaries shall be for the various active stockholders as well as for the employees. I suppose the salary is based upon a man's ability and his earning capacity. Either Mr. Bowles or I attend three principal meetings during the year. The general purpose is to get in touch with the business conditions. It gives us a line on the class of cattle that will probably be handled during the fall. We have a weekly market letter that we issue and at seasons of the year we get out a letter to 15 or 25 or maybe 100 different people for a particular line of cattle that will be marketed in a specified time. We confine our market letter largely to active people we have done business with or on request. We have a pencil and a memorandum book that we give out as a novelty.

Handling "Seconds"

We handle very few seconds. A stocker dealer might buy several cars of cattle in which there are some fleshy steers. The dealer will class those cattle and the thin steer will sell to a better advantage than the fleshy steers. Sometimes he will take the fleshy end down to a commission man and try to resell them. It is an exception when traders turn stocker and feeder cattle over to a commission man to be sold. If a dealer or trader has any cattle he wants you to sell he will deliver them to your alley and if you can't sell them he will take them away. He does not ask you or require you to do any other line of work other than
[fol. 424] selling cattle. They will generally bring them down sorted. Naturally we will resort them if we think they will go better. Generally the commission man handles the feeding. After they are sold we attend to the weighing the same way as we do the fresh stuff.

A good many concerns have salesmen that specialize on the particular type of animal he is handling. He has an idea of value of all classes and kinds but the man who makes a specialty of stockers and feeders is better posted on the particular class of cattle that he handles than the fat cattle salesman.

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Cross-examination:

I have been connected with the livestock industry 28 years. For five years I was with the packers, and since then in the commission business. I started out with the packers as a messenger boy, and when I left the packers I was buying calves and odds and ends on the Omaha market. I entered the commission business at Denver. I began selling cattle. I was in Denver three years and in Sioux City four years. Then I went to El Paso, Texas, to handle range cattle for a commission concern. I was in Texas eight years. Twenty years ago a packer buyer would not think any more of buying 20 cars than some of the packing house buyers think of buying two right now. They are specializing on these cattle. To illustrate the point, a buyer bought 13 head out of one drove of cattle several weeks ago, and he weighed them up to a special [fol. 425] account. He sorted those 13 head, and when he got through there was not a variation of a hundred pounds in the two different classes of cattle. The packers have a man to buy this and a man to buy that, and it requires a lot of time on the part of a salesman to try to get his cattle sold to the best possible advantage. He deals with ten specialty buyers now, where he used to deal with two real buyers. Up to a few years ago, the sorting was done after the purchase when the beef was on the hooks. Now it is done in the yards by the salesmen, and sometimes by both salesmen and buyers. This increases the work and responsibility of the salesmen.

Right now the spread between the lowest and highest values on cattle is $12 a hundred. When I first went into the stockyards the spread was not nearly so great as it is now. As that spread has increased, the responsibility of the packer buyer and the salesman has tremendously increased. Business experience has probably been the salesman's best teacher. If he is smart he knows cattle, and especially the kind he is handling. Capable salesmen must be students of conditions, the general market, the outbound movement of stockers and feeders, and what is going on generally in the livestock line. He must possess some initiative and independent judgment. It is very rare that cattle come to us with the price tags already put on them. A salesman must be able to judge the market value of live-

stock from the standpoint of its quality and grade on the market. It is common for the different buyers to vary 50 [fol. 426] cents to a dollar a hundred in their bids on the same lot of cattle. The cattle which come off of the pastures where we have arranged pasture contracts arrive mostly in straight carload, single ownership shipments. Generally, there are several cars in each consignment. It is essential to have salesmen of the highest competency in charge of the fat steer division. As you maintain fat steer price levels, the tendency is to maintain the general price levels all through the various butcher classes.

Our salaries are fixed in line with the expected amount of revenue which our concern will derive from the business. There is approximately a 15% cut in the salaries or drawing accounts between 1928 and 1929. No compensation is paid to the members of the Bowles Livestock Commission Company at Chicago:

There has been quite a series of bank failures going on the last few years. Our risk is two fold what it was a few years ago. A business of this kind, where a great volume of actual money and property of value passes through the business each year requires some supervision.

The Omaha stockyards covers an area that is square and the outer dimensions are practically equal in length. At Kansas City the construction is strung out in a sort of long rectangle. That has considerable effect on the cost of yard operations. The handling of the livestock at Omaha was done a little easier, I believe, than it was here. It entails a lot more work to get cattle off of the far dock [fol. 427] to any particular division in the yards than on any other market I have been on. On top of that, a commission man here has got to get his own cattle and hogs, and bring them to his own division. The yards at Sioux City and Denver are comparable to the yards at Omaha as to layout. We have our own men bring up the drive-ins to us here at Kansas City from the drive-in gate. That applies to both hogs and cattle.

Recently the stockyards company adopted a rule, whereby it yards in one pen livestock consigned to different commission firms if they arrive in one truckload, and then it puts the responsibility on the representatives of the various commission firms of sorting that livestock according to the identification given by the truck driver. In Omaha

I am sure that the hog docks join the general hog selling department. I am not positive about the drive in cattle dock. I know several packer buyers who have admitted that it is harder to buy on the Kansas City Market. That is due largely to the wide variations from the standpoint of origin, methods of feeding and finishing.

Whereupon the witness was temporarily excused.

[fol. 428] JAMES R. HENDERSON, a witness, called by the Government, who had previously testified, returned to the stand and testified as follows:

Cross-examination:

My firm is a successor of the former firm known as Moffett Brothers and Andrews. Prior to the time John Moffett and Tom Moffett went into the commission business they went into the cattle business in the Southwest, and their operations were very successful from a financial standpoint. In the early days of their commission business they did a substantial loan business. I would say that the loan business assisted in building up a volume of commission business for the firm. As depressions came in the livestock industry that had to foreclose some loans and take over cattle and lands. Some of these lands became very valuable. My firm is at present doing no loan business. Tom Moffett now owns cattle and sells them through his own commission company. He had cattle here this week. He exercises supervision in a general way over the operation of the business. He has spent a lifetime in the business, and his whole heart and soul are in looking after the interests of his customers. He usually arrives at the office not later than six o'clock in the morning and rarely leaves before six at night. He is out in the yards every day conferring with salesmen and looking after the feeding and proper filling of the cattle. These commission men are real experts, and their knowledge is certainly worth something to the shipper. They are put up against the [fol. 429] expert buyer that the packing companies employ. I personally have an interest in a farm and a herd

of cattle located in the Flint Hills country. I would not consider that I was competent to compete with the things that we have to contend with on the open market. It is my judgment that competent and efficient salesmanship is an invaluable asset to the owner and producer of cattle. Mr. Baker has had more than 30 years' experience on this market, and has been a salesman for most of that time. At the present time he devotes his entire time to the purchasing of cattle on orders. His ability as a salesman is just as good as any other salesman that we employ. He is very diligent in his efforts to look after the interests of his patrons. In the transaction of our business, I would say that it is absolutely as necessary to be accurate and as competent as the average bank employee.

Redirect examination:

Our firm does not maintain an automobile. Our trips are all made by train. Automobiles are used at the terminals where they wish to inspect cattle. I would say that there are men at the yards who are better judges of livestock than others. Some of the salesmen down there are comparatively young men, and perhaps never had the experience in handling livestock that the older men have. Mr. Moffett and Mr. Baker have been in continuous service for more than 35 years. Charlie Stockton, our steer salesman, has been there more than 25 years, and has been connected [fol. 430] with important firms all those years. Barney Metz, our butcher salesman, has been there about 12 years. Our hog salesman, Mr. Holmberg, has been there probably 20 years. In their supervision of the business, Mr. Moffett and Mr. Baker do not attempt to limit the salesman in any way on his judgment. They just confer together and offer any advice as they see fit. Oftentimes a salesman will ask them what they think of a drove of cattle. In the final analysis it is left up to the sa*el*sman.

Our traveling expenses have generally been limited to a very modest amount, so that it has never been necessary to make a budget. All the expenses from the time they leave the office until they return go into the traveling account. That account includes transportation, railroad fare, and meals. It is my opinion that efficiency in the operation of livestock commission firms would be helpful to the shipper, and would naturally operate to the benefit of

the firm itself. If salesmen and employees were all efficient, it would operate to the firm's benefit, but the greatest benefit would be to the shipper.

Our losses from inaccuracy are quite infrequent, but we have small losses creep in from the fact that we overlook putting in a bedding charge or a feed charge on the freight bill. Sometimes we collect from the shipper, but occasionally a shipper will ignore such a request and we take the loss rather than turn away a customer. Most of them will send it to you if you will write for it. Occasionally a shipper will draw a small amount of cash, and [fol. 431] in our rush and hurry to get out his account of sale we may overlook charging it to him. In most cases those matters can be satisfactorily adjusted.

We solicit truck business but do not make any special effort along that line. Some firms solicit the truckers' business through the local papers. Our firm does not do that.

Recross examination:

About 15% of our float is on sales and about 85% is on purchases. Our sales float would average about two and a half days and our purchases would average about three and a half days. Mr. Baker and Mr. Moffett receive no set salaries but they divide what is left between themselves.

Redirect examination:

In the employment of a salesman there are required ability, experience, honesty, standing with the industry, acquaintance and ability to control business. The fact that he owns a membership and can go into the country to solicit business is a factor.

Whereupon the witness was excused.

[fol. 432] JOHN W. MURPHY, witness for the Government.

Redirect examination:

I don't believe there was much change in the buying or selling tactics until possibly right at the time of the start of the war or shortly after. They started then making

quite a distinction in the classes of cattle. Up to that time packer buyers bought a whole consignment of cattle, good and bad, at one flat price. I mean by that that they would buy them in any single car or up to as high as 18 or 20 car consignments practically all of one kind of cattle. The weights might vary considerably. They would buy a train of cattle that would vary in weight from 800 pound steers to as high as 1200 and 1300 pounds. You do not often see a packer buy any cattle nowadays ranging in weight from 800 to 1300 pounds. They are generally sorted. I believe the order buyers for the eastern packers make even a finer distinction. I am not as well acquainted with the handling of hogs but of course the spread in weight cannot be as much. These light hogs have gone to the front for the first time in a long time. Each order buyer demands a certain weight of hogs within a very narrow range.

I have seen a variation of $1.00 a hundred on the same class of cattle on the same day. Those things happen because of variations in the knowledge and ability of the buyer and the seller. We get cattle from the pasture area even when we have not helped the owner of those cattle to [fol. 433] rent the pasture. A great many of those Texas and Oklahoma men rent their own pastures. After we have helped some of them they deal direct with the owners of the pastures. In some cases we continue to get their cattle.

Each of the big packers have two fat steer buyers on the Kansas City market. They have men that buy the yearling class of steers and the butcher class. They have 3 or 4 butcher buyers each and at least 2 calf buyers each. I venture to say that if we would get 20 cars of western cattle a day, such as we were getting 20 years ago, it would probably require four or five times the amount of time in classing these cattle than it used to when I started. We would probably have to find a half dozen buyers for that particular train of cattle. In 1923 there were times when we could sell a packer five or six cars of cattle of one kind, particularly of grass cattle. It is the exception when you sell them that way now. These buyers have the most difficult orders to fill and they will give correspondingly more to the highest grading, killing classes of cattle.

Some of the eastern packers are steady buyers on the Kansas City market. I started in at Omaha in 1902 and went to Denver in 1907. I was back at Omaha four or five

times between 1910 and 1914. I was in a concern for 12 years and I would relieve a salesman or buyer at five or six of the markets they operated on during the vacations or something of that kind. That was with Clay Robinson [fol. 434] Commission Company. I have not been actively on the Omaha market since 1914. I meant that the Omaha yards were comparatively more of a square than the Kansas City yards. I do not think that the commission cattle division at the Omaha stockyards is more irregular in shape than the commission division in the Kansas City stockyards.

Kansas City gets a larger variety of livestock, particularly cattle, than any other known market in America, and that is the reason why it is a more diffcult market on which to buy cattle. I don't know personally of any other market that draws from the same range that the Kansas City market does.

Q. Mr. Murphy, about how many cars of cattle do you handle in a year?

Mr. Gage: Now, Mr. Examiner, that is objected to, if it is to be a matter of rambling information from the witness, they have the audit here that not only has the number of cars, but the number of head for the year 1929, and, of course, we can have an accurate record gotten up on how many cars this firm handles from the books and records.

It seems to me like that sort of a question is drawing out here matters of inaccuracy, when matters of accuracy can be developed, and absorbing time in the process.

Mr. Bohanan: Mr. Examiner, I think if my question was understood, I was not asking how many cars of cattle the Bowles Livestock Commisison Company handle in a year, [fol. 435] but how many cars of cattle Mr. Murphy handles as a salesman in a year, if he knows.

The Witness: Well, off hand, I don't know, and that would depend on the conditions. A hundred and one things could develop in that.

Q. Would you say that you ever handled as many as 1500 cars in one year?

A. Yes.

Q. Was that recently?

Mr. Gage: Well, now, Mr. Examiner, I object to the question the way it is put, how many he has handled. You mean

how many has he, as a salesman, in an organization, in conjunction with all the other factors that enter into it sold in a year?

The Examiner: I take it, you refer to how many he has sold, Mr. Bohannan?

Mr. Bohannan: I think that was my question, handled as a salesman.

The Examiner: All right.

The Witness: Well, off hand, I could not tell you how many I have sold.

Q. I take it you don't know how many you sold in 1929?

A. No, I don't, Mr. Bohannan.

Q. You don't know whether it was 1500 or 1000 or what?

A. Well, off hand, I couldn't say just what it was, be- [fol. 436] cause I haven't any recollection of what our year's business was, that particular year.

Q. And you couldn't say how many you have sold thus far, in 1930, I take it?

A. I couldn't give you an accurate estimate of it.

Q. Now, taking your business as it is, how many cars do you think a good salesman could sell in a year, if he had them to sell.

Mr. Gage: Now, just a minute. I object to that question. It is just as ridiculous and foolish to be asking questions like that in this hearing, as it would be to ask in a rate hearing, involving the rates of the Union Pacific Railroad Company for freight, how many tons of traffic they could handle in a year. It has nothing on earth to do with it, and wholly immaterial to any issue here. You can ask how many they have sold.

The Examiner: Objection overruled.

The Witness: Do I understand I am to answer that.

The Examiner: If you know; yes, sir.

A. I don't think there is a human being on earth could tell.

Q. Do you think he could handle as many as 1500 cars and handle them properly?

Mr. Gage: Objected to.

A. Yes.

Mr. Gage: What?

[fol. 437] The Examiner: Read the question.

(Last question read.)

Mr. Gage: That is objected to for the reason given in the objection to the former question, and for the further reason that it fails to state the conditions under which they are to be handled.

Mr. Bohannan: Conditions just as they have been in the past year at Kansas City.

The Examiner: All right; objection overruled. Is the answer "yes," as stated above or not?

A. Yes, but that would depend altogether on market conditions climatic conditions, and the various things that enter into livestock selling.

Recross-examination:

I did not sell all the cattle that were consigned to my firm last year. On some of those that I did sell, various salesmen assisted me with their counsel and advice. We worked together. I think I worked reasonably hard during the year. I venture to say that I put in eight to nine hours every day, and that was true with reference to other salesmen. There were times during the year when my work was so crowded that I could not give all the attention to the cattle that I would have liked to have given them. I know of instances where producers and owners of cattle in the country have split up their consignments among several different firms in order not to overcrowd the salesmen [fol. 438] of any particular firm. I could go down to the yards, and if I were just interested in disposing of these cattle at any price I could sell a very large number. There is a difference between simply getting rid of cattle and really selling them. I was at Denver when there was no exchange organization there, and we had instances where buyers would back out of a bid, and I have seen instances where a seller would back out of a bid. Those conditions do not exist under the present organization of the market at Kansas City. We sell cattle to the countryman. In fact, we sell them to anybody that will give us the most money for them. We are after net results for the shipper, and it is immaterial to us who buys the cattle, and when we buy we go where we can get the best results.

This stockyard gets pretty sloppy in wet weather.

Whereupon the witness was excused.

[fol. 439] A. J. MAURER, a witness, called by the Government, after being sworn, testified as follows:

I am a livestock order buyer at the Kansas City stockyards. I do not conduct business on any other stockyards now, but have at St. Louis and St. Joseph in the past. I buy all species of livestock. The majority of my customers are eastern packers. I first started in Kansas City with my father in 1886. He was speculating. I have been an order buyer for nine years. I have standing orders, and also receive separate orders from eastern packers. The majority of them are separate orders and are one-load orders. I receive these orders by wire and telephone. The majority of them come in the day that we are expected to buy the livestock.

The stockyards company takes charge of the livestock at the scales after we have purchased it and it has been weighed. The company is supposed to do that. A lot of our shipments is weighed late, and we have to drive them to the trains. There is a specified time when we have to have the pen numbers in, and when they are not in by that time we have to deliver them ourselves. That keeps our yard men busy. Some days I buy 30 or 40 cars. Some days you can buy 30 or 40 cars with less effort than you can buy three on another day. On those peak days we have to have extra yard help. Quite frequently I buy six or eight loads of cattle in a string, and I will sort them up. There will be a heavy and a light end, and a medium end. [fol. 440] Sometimes I will buy a half a load of cattle and hold them over and fill them out the next day. I don't suppose I have sold three loads of cattle on the Kansas City market since I have been in business.

One man can buy all classes of cattle but he can't do as near a good a job as he could if he specialized on one kind for the reason that different salesmen sell different grades of cattle and if a man is buying everything he has so much ground to cover that he can't see near all of them. It is quite a handicap to have to buy two or three different classes of cattle in one day. If he handles only one kind he gets to see many more of that particular kind of cattle and gets a larger assortment to select from. It is not a question so much of judgment as it is of getting to see the cattle. He does not have the opportunity of getting the assortment. I feel that I have to keep posted

on all kinds because I have to know whether the buyers under me are buying them worth the money. I never had any hesitancy in buying any class of livestock. The principal reason you need assistance is because you don't get to see the cattle. If a salesman of a special kind knows that you are a good buyer of that kind he will try to see you before he sells his cattle.

We then make up an account purchase listing the number, price and weight of the livestock purchased and send that with the scale ticket to the purchaser. Then we either [fol. 441] draw a draft against the customer or wire him the amount, according to his request. That means that we are out of the use of the money 3, 4 or 5 days and with the Federal Reserve Bank it means that we are out of the use of the money from one to three days for which we get no credit at all. When we draw a draft it takes anywhere from three days to three weeks to get the money back. Two weeks is not unusual.

It is not usual for a big packer to be dilatory but it is for some of the small ones. I ship to packers that I know haven't much money. I just take a chance that I will get through. When I draw a draft and deposit to my account I get credit subject to payment, but I have to pay the bank the float for all the time it is out. They charge me interest on a float. They charge me 7 per cent interest. Those customers who are out a distance I charge exchange. I make a float charge aim to cover the interest. I charge $1.00 a thousand. That does not apply to drafts that we get back in three, four or five days. However, it only takes five days at 7 per cent to eat up that $1.00 a thousand. The exchange does not cover the interest which the bank charges. We do not charge exchange on customers who are near by. A good deal of it is governed by the bank that we draw on.

It is almost impossible for a man to come from another place and buy cattle on this market regardless of how good a judge he is. I feel any good order buyer can have an [fol. 442] outsider several times his commission charges in his trading. When I buy from traders I find the cattle are more closely sorted than when I buy from commission men. The traders even them up and make a more uniform type but the commission man likes to sell the string.

I find active competition when I go into the yard to buy livestock. Some days it is much more active than it is

on others. When the beef market is demoralized the packers are rather indifferent and the big packers are naturally a little more indifferent than the order buyers. When that condition exists I quite frequently get fair sized orders on the assumption that the receipts are going to be lighter on the market and by the time the cattle arrive at the packing plant they will be worth the money. Last week I bought 81 loads under this condition. I would say 90 per cent of the time that a higher market has a tendency to increase the receipts of livestock. When the supply becomes higher it has a tendency to depress the price. The condition of the market here is affected almost wholly by the meat market in the East. The packers and the feeder buyers have all the principal markets in the country available to them. Ordinarily different markets do not stay out of line very long.

As soon as you are through with a trade and walk out of the alley it is understood that either the seller or buyer can change his mind in regard to the offer or bid in those [fol. 443] cases where a deal has not been made. As long as we are trading in the alley it is an unwritten law that we will take the cattle at the price bid. It is the custom that if I am first on a bunch of cattle and bid and another man bids the same price, the salesman comes back and offers them to me. A good many of my orders have the price stated at which I am expected to buy.

My advertising consists of circular letters, telegraph and telephone. I send out circular letters once a week. We make periodical visits to our customers. I might have five or six customers here on the market at a time and will entertain them.

Each buyer has a horse and saddle and we have to rent a good many horses to the country trade. When the country buyers come in they want to ride. Sometimes a man will stay around and use a horse two or three days, go home and not buy anything. We rent these horses at $2.00 a day. The firm provides the horses used by our buyers. A good fast walking saddle horse is worth a lot of money to a buyer. I hardly ever have over three horses.

I was head buyer for Armour & Company at one time here at Kansas City, The packers ultimately make the price on slaughter livestock. They do not always make it on the basis that they want to. The big packers have to meet competition in the selling of their meat.

[fol. 444] Cross-examination:

It is the breadth and amount of the demand for livestock as expressed in bids of various buyers which make the market for livestock at Kansas City. I recall the days when the erection of packing houses was encouraged by donations of land. I believe that the stockyards company, the commission men and the producers should encourage the presence of order buyers and off market packers on the market. The more competition there is the better it is for the man who ships his livestock to market. Perhaps every day I bid on five to ten times as many cattle as I purchase. Those bids serve to stimulate the market. I think anything that advertises our market and brings additional buyers here is very beneficial to any one who ships to this market. It used to be that a head packer buyer had the privilege of buying almost an unlimited amount of cattle if the price looked right to him. Now they are limited as to their purchases and won't buy many more cattle than they have orders for without first wiring to the firm about it. It requires much more sorting to get the kind you want. There has been a very wide spread in the price of cattle. Last week the top was 14½ cents a pound and we were buying some canners from around 2½ cents a pound. This wide spread casts a great deal of responsibility upon the salesman and the buyer. The differentials between the grades and classes of cattle require a more refined or higher degree of judgment. I will say that it is easier to make a mistake of $1.00 now than it was a quarter in 1906.

[fol. 445] I have bought cattle on St. Louis, Chicago, Omaha and Fort Worth markets. Kansas City receives more cattle of the gambling order than most other markets. We get cattle that may look very much alike but differ materially in quality. This is especially true in the fall of the year. The quality of livestock from different districts is just as different as daylight is from dark. I have to keep posted on the condition of the crops in these different sections. The climatic conditions cause a change in the beef. The dressing of the beef has very little to do with the value of the steers, but it is the quality of the beef that counts. A man's experience cannot be too broad to be of benefit to him in buying. The same thing is true of a salesman. In buying feeder cattle, we have to look ahead and

judge how those cattle are going to mature. It takes a good deal of judgment and experience to be able to tell how they are going to develop.

Q. Well, now, have you ever had any instances come up in your buying operations where you have been able to get an advantage in the price you pay for cattle by reason of more accurate knowledge of the climatic conditions in the particular territory from which those cattle were coming, say it was Oklahoma or Colorado?

A. Yes, sir, I think I have had that come up a good many times. When you speak of Oklahoma I remember when Church Bridgford was here, I think probably it has [fol. 446] been fifteen years ago, or maybe it has been twenty years. I owned a few farms down in Oklahoma and Oklahoma at that time was not known very much as a farming district, and it had only been settled up a few years, and they happened to have an exceptionally good season and they raised as good corn as they ever raised in Iowa or Nebraska and corn was selling cheap and a good many cattle were fed there and most of them had been marketed down in their local territory, but they got to coming up here because the local territory was over supplied, and Church Bridgford happened to get into that territory and had a whole train of them one day and I was at that time buying for Armour and I knew exactly how the corn crop was and knew that corn was cheap and I knew that these fellows had fed lots of corn to their cattle and I went to Church and I said: "Church, this Oklahoma cattle, don't anybody else want to buy them much; they don't kill very good, but I have got a lot of land down there and I will boost that land and I will buy these cattle; you don't need to show them to anybody else;" He said: "All right." Of course he showed them to other people but they had always been killing rough because they didn't feed them much, and I got started with him and I bought, I think, 90% of those cattle, and they all killed out just as good as Iowa or Nebraska or any place else, but it made quite a difference to the company I was working for because I had got them and got them before anybody else knew that they were worth the money. Another time, it was not exactly climate that caused this, but I was feeding some cattle of my own, and [fol. 447] I was up at my own feed lot, and I had a bunch

of cattle that was a little plain, and I looked at them and I was disappointed in the way they had done. The lot had been muddy all that winter, and I said to myself: "These cattle have not done as good as they should have." I had not been there for a few weeks. The following Monday I rode in to a pen of cattle that at first glance I said to myself that I would not buy them, but I happened to think that they looked just like my cattle and I said that this man has fed them as long as I have and conditions are about the same and I will bet that they are better than they look, so I took another look and concluded that I was right and bought the cattle, and they were cheap. If I hadn't had that experience of feeding cattle myself and understanding the conditions I would probably—overlook- them. I just cite that to show you that a man's experience cannot be too broad to be of benefit to him in buying.

Q. That same thing would pertain to a salesman too, would it not?

A. Yes, sir, it certainly would. The only difference is that the salesman would have to convince the buyer that he knew it and the buyer already knows that he knows it. That is the only thing.

(Whereupon the witness was temporarily excused.)

[fol. 448] W. T. ANGLE, a witness called by the Government, after being sworn testified as follows:

Q. When did you first become connected with the livestock industry?

A. I was born and reared on a farm which happened to be more of a livestock farm than a grain farm. All the grain that was produced we fed to livestock and consequently from childhood I have been associated with livestock.

Q. And how long ago did you leave the farm?

A. I first left the farm in 1915 when I started at the university and I was back to the farm 2 years, 1917 and 1918, then went back to the university and completed my university work. From that, I went into county agent work, and then into livestock marketing work.

Q. What university did you attend?

A. University of Missouri.

Q. What course did you take there?

A. Agricultural course.

Q. From that you went into livestock marketing?

A. I spent 2 years as county agricultural agent before going into livestock marketing.

Q. In Missouri?

A. In Missouri, Pettis County.

Q. How long have you been engaged in livestock marketing?

A. Now, going on my eighth year.

Q. And has that all been at the Kansas City Stockyards? [fol. 449] A. All except 2 years at National Stockyards, Illinois.

Q. Was that your first 2 years?

A. Yes, sir.

Q. With what organization are you connected?

A. With the Producers Commission Association.

Q. And have you been with them during your whole eight years of livestock marketing experience?

A. Yes, sir.

I am connected with the Producers Commission Association which is a livestock marketing organization incorporated in the State of Kansas for the purpose of marketing livestock on the Kansas City market and in the country. The association is a member of the National Livestock Marketing Association, along with 16 other terminal agencies and state or district marketing associations. The association was opened in Kansas City on March 6, 1923. Our association is commonly known as a cooperative, the qualification for membership being that the applicant must be a bona fide livestock producer.

Q. Mr. Angle, have you ever been connected with any so-called old line commission firm?

A. No, sir.

Q. Have you observed, in a general way, the operation of so called old line commission firms at the Kansas City Stockyards?

A. Yes, sir.

Q. From that observation will you state for the benefit of the record, what, if any, substantial difference or differ- [fol. 450] ences there are between the methods of operation of so called old line commission firms and so called cooperatives?

A. The difference is in selling. The watering and grading and weighing of livestock between the old line firms and the cooperatives is very slight, if any, difference of consequence. I could not say that the method- of handling the livestock in process of selling are different to any degree at all.

Q. I take it, of course that different salesmen among the old line firms would have some difference in their ways of selling and handling, and that the cooperative salesmen would differ in about the same way, or *I do* make the question clear?

A. Well, the variation of the salesmen whether employed by the privately owned agencies or cooperatively owned agencies is the way they conduct their work, is more, I think, a matter of the individual than it is of the organization. While, it is, to be sure, that the cooperative with an accumulation of volume has put in in the markets where they have created a large volume, a system of handling their livestock probably that it is a little different than anything that has been practiced on the market.

We commence making up our account sales anywhere from 8:30 on. The peak of the salesmaking process comes ordinarily between 1 and 5 o'clock as far as the office work is concerned. The peak of the selling in the yards on an average day is between 9 and 12 o'clock. The amount collected each day varies considerably with our association [fol. 451] from season to season. From February to July we normally get our livestock weighed up more promptly and the volume of receipts through the stockyards is lighter. In that time, it would be my opinion that 75 per cent or more of our collections would be received on the day the livestock is sold. There are other periods when we would not collect over 25 per cent of the proceeds. We find it necessary to carry a bank balance to cover the matter of remitting the proceeds of the sale before they have been collected. During the heavy marketing period of from 4 to 6 months the need of a bank balance to make prompt remittances is decidedly greater than in a period of light marketing.

Advertising and Publicity

My firm still gives subscriptions to the market paper. It does not join in the radio broadcasting conducted by the Livestock Exchange. Our circular carries with it at the

present time every few weeks a full report on the livestock situation as it is summarized by our research department, our salesmen, and other information. We try to give our livestock customers better information on present and prospective supplies of livestock as well as the demand for meats and meat products. We also give out information in regard to the sales on the market. We also give out educational information about cooperative marketing. That report is sent out once a week. That report goes to our members. We try to eliminate those members who are not immediately interested in shipping livestock to the market. We handle livestock for both members and non members. [fol. 452] The National Association publishes our monthly livestock paper and supplies us with research material for our market service. The National sends us no favor or specialties for our customers. Our calendars and all those things are gotten through our national office and are paid for proportionately by our respective terminal agencies. Our monthly paper is called the National Livestock Producer. We furnish a list of names for our territory and the National Association mails the paper direct. We are billed for our proportionate cost of operating the paper. The cost is apportioned on the basis of the number of papers going into each market agency's territory. That cost appears on our books. The research report comes to us every 2 weeks and it gives us information in regard to the immediate supply of the different classes of livestock, changes in feed prices, conditions of the dressed meat trade, prospective demands for meats and probable future trends. We pay the National Association a flat 50 cents a car and part of that goes towards our research department. That cost is shown on our books.

The office of the National Livestock Marketing Association is in Chicago. Its advertising is very limited, and is not particularly adapted to bring us business. It does not carry any solicitors. Now and then we make contributions to that organization in connection with special projects. We pay our proportionate part for the calendars that we get here at Kansas City, and we contribute to the Inter- [fol. 453] national Livestock Show, the Boys and Girls 4-H Club, and the Junior Farmers' Banquet. The National Livestock Marketing Association does not furnish us anything for which we do not pay or make some form of contribution. Our soliciting is done practically entirely by

our buyers and salesmen. We have a classification of expenses for educational purposes. It covers programs carried on in cooperation with county agricultural agents and State Agricultural Colleges relative to the grading of livestock in the country and the factors which enter into the determination of the price of livestock. The purpose of this is to get the livestock producers to cooperate with the marketing agency in trying to supply our market more nearly with the quality of livestock that we need to maintain profitable levels or prices.

Our firm does radio broadcasting. It broadcasts the day's receipts and the estimates for the following day, and information in regard to the price of livestock. We also give information in regard to specific sales at the market made by our firm. We contribute some of our research material to our radio broadcasting. The radio broadcasting is used for all those purposes that will give the livestock listener a better picture of the market, the general trend in prices, the supply situation, and the condition of the dressed beef market. We broadcast from five to ten minutes each day at 12:25.

Only a small portion of our total business is made up [fol. 454] of cooperative livestock shipping association shipments. There are probably more plural ownerships in our consignments from the individual shipper than we handle for shipping associations. I am acquainted in a general way with the present tariff and the variations that occur in making charges. I have always felt that the tariff as it stands today is too complex, due to the fact that many countrymen cannot understand it. A farmer may ship four loads of cattle to this market during a year and probably the number of head in each car will vary. He will compare his four bills, and find that he was charged four different amounts. In his way of thinking the charge should have been uniform. I would prefer a tariff that is simplified to the extent that any countryman could read it and understand it without explanation.

As general manager of the Producers Commission Association it is part of my duties to employ salesmen.

Q. Have you given any thought or consideration to the number of cars of various species of livestock which a good

salesman should be able to handle in the course of a year, taking the livestock just as it comes to this market?

A. Some; yes, sir.

Q. Would you state your views in that matter?

Mr. Bohannan: Let me add to that question——

Q. Assuming, of course, that he had that many to handle. What I mean by that is, that the number of cars he handles may be limited by the number he can get to handle, but [fol. 455] assuming that he could get all he could handle.

A. The number of cars that a butcher cattle salesman can handle at this market, and throwing into carload department the truck-in business, as it runs to the average firm in the way of odd head, the number that he could probably sell would vary considerably from the number that the steer salesman, and selling western stocker and feeder cattle, or western slaughter steers, or even native slaughter steers could handle.

Q. And why would that be, Mr. Angle?

A. Well, the shipping association, the truck department, to a large extent, includes cattle for the butcher cattle salesman to sell, veal calves and cows, at various degrees of flesh, and bulls, different grades of butcher heifers, and it gives him so many various head of animals to determine price upon, separately from the balance of the load, that it naturally consumes more of his time to find an outlet for a carload of butcher cattle, especially the cooperative shipments, than it would take a salesman of like ability to sell in the steer alley, or even in the butcher alley, if they all ran a straight load of heifers of one weight and one quality, and same degree of fleshness, practically so, all belonging to one owner.

Q. Do I understand that the salesman could handle more fat cattle—I mean fat steers—than he could of the butcher class? Is that your idea?

A. That is it, because the countryman that feed cattle are [fol. 456] different, or they carry their business on differently.

The average man that feeds steer cattle, feeds a carload. There are those farmers who feed a few odd head of steer, but they are not very numerous, but the number of farmers that produce cows, low cutters and cutters, low-grade butcher cows, medium, good, and choice cows, and some different grades of vealers and grades of bulls and grades

of heifers, every form practically than is around this market, produces some of those butcher grades, and many of them, practically all of them, when they get to market, they have got to be marked out to the respective buyers that are interested in each one of those classes and grades of livestock, whereas in the steer alley you won't find the number of ownerships represented on any one day or on the average, on any week of any year, nearly so much as in the butcher cattle alley.

Q. And did I understand you to say that the salesman should be able to handle more cattle in the steer alley than in the butcher alley?

A. Yes. As receipts come to this market, I would say so.

Q. Now how about stockers and feeders?

A. Stockers and feeders that originate in the Southwest and come to this market in carload lots usually come in such a manner that they do not require a great deal of sorting and shaping, and to turn over a rather relatively large volume of sales on that class of livestock is probably as easy, and can be accomplished with the smallest amount of time of any grade of livestock offered for sale on our [fol. 457] market.

Of course, the truck—in stocker and feeder cattle of this market, a few head in every day, practically, to every firm, and sometimes many head to some firms, are oftentimes slower to move, and to find the probably outlet for, than probably a carload of the same class of cattle.

Q. The truck-ins would tend to reduce the total amount that a salesman could handle?

A. I would think so, yes, sir.

Q. Now, considering all those things and including all the classes of cattle, all the kinds, including the truck-ins as well as those that come by rail, and taking them as they do come, that is taking in to consideration that there are peak periods in the year that you cannot get them evenly distributed throughout the year and that you cannot get them evenly distributed throughout the week, considering all these things and the conditions as they exist right now, I do not mean just as confining your considerations to this past week, but considering present conditions of an annual basis at Kansas City, and expressing it in terms of carloads; would you say that if a good cattle salesman had that many cattle to sell he could dispose of 1500 carloads in a year and do it as it should be done?

The Witness: May I have the question?

(Whereupon the question as heretofore recorded was read by the reporter.)

A. Yes, sir.

[fol. 458] Mr. Bohannan (continuing): Do you think he could dispose of any more than that number, Mr. Angle?

A. Yes, I do.

Mr. Bohannan (continuing): Would you state how many more?

A. I have often reasoned in my mind about how many cars of livestock a good salesman, with average ability to make sales, and average capacity as a salesman, or better than average, could make in an average day, and it resolved itself into a question of how many the buyers will buy from him on a given days, or if he has got the big run of cattle in his alley, one particular day and his surrounding firms have gotten few. I sometimes think that the market gets along better by that concentration of volume rather than having it scattered from the standpoint of making sales, and I have often thought that in our end of the yard, which comprises about half the yard, we have separate packer buyers, head packer buyers, and also butcher cattle buyers in the other half of the yards, and that it appears that about two to three to four salesmen or somewhere in that neighborhood are idle while they are waiting for another salesman to release the buyer, and in the volume that is being handled by the firms in our end of the yard, and the same applies generally to the yards, it is difficult to determine just how many cars could be handled as the maximum if a firm were given sufficient livestock, cattle, to be graded into their respective classes, and the salesman put in charge of each grade, it is just a little difficult to determine how far he might go in the [fol. 459] making sales, as long as he had buying power in proportion to the livestock he had for sale, but I, in a general way have always considered that any salesman who would be entitled should be called a good salesman, could sell at least five carloads of livestock on the meanest day that we normally have at Kansas City, and on days when if he had the livestock there are many days he could sell a hundred. The factors entering into how many he can sell are many, due to the fact of the tremendous num-

ber of firms doing business and the volume sways this way and that. One firm has a big day one day and maybe the next day his runs are light, and it comes and goes and sometimes when a salesman has only a few cars of livestock and some other firm may be, or several firms have large runs of the same kind of livestock, he, most of the times, has to wait to get a buyer, and he is delayed in making his sales just about as much as if he had four or five times as much as he had or all that four or five surrounding firms have because he has to wait until the buyers go around, that he is going to try to sell to, and wait on those firms anyhow.

Q. And I believe you have already stated that salesmen could probably handle less of the butcher class than other classes of cattle, the butcher class taken as a whole, in your opinion, could a salesman handle as many as one thousand five hundred cars of butcher cattle in a year?

A. Taking the butcher cattle as they come on our market, [fol. 460] carloads and mixed lots of butcher cattle, I would say yes.

Q. Now, with respect to hogs, Mr. Angle, would a good hog salesman under these general conditions I have outlined in the questions and you have outlined in the answers with respect to cattle, would a good hog salesman be able to handle more or less hogs than the cattle salesman could handle cattle?

The Witness: I am inclined to feel that men of like capacity, that the number of cars that either could sell, the hog man as compared to the cattle man, would not vary a great deal. The same principal applies in one department that applies in the other. If you give a man ten carloads of cattle of like weight and flesh and quality and sex, when he finds a buyer for one of them he has got them all sold, and the same thing is true in the hog alley, with buyers on our market, packer buyers willing to buy large numbers, a man in the hog alley, with the increased truck business at this market, offers additional necessity for the yarding separate and additional sorting due to the truck-in business being split up on each truck farmer's own livestock, it has to be segregated and sold separately, and in the main I would say that the hog man could sell as many and I would be inclined to think more cars than the butcher cattle man could sell in the butcher cattle department. I

would not say that would be true of the steer department.

Q. And, how would it be with respect to the sheep salesmen?

A. Well, in the sheep department, selling can be done [fol. 461] with more speed or more cars handled with more ease on the part of a salesman proportionately, I believe, than either cattle or hogs. Especially is that true of the western and southwestern sheep consignments coming in by carload.

Q. And, you could give us, approximately, your opinion as to how many cars of sheep a good salesman should be able to sell in a proper manner?

A. I should think that, conservatively, he could handle 1500, or 2000 cars.

The Examiner: Is that single deck or double deck, to which you refer, Mr. Angle?

The Witness: I had reference to the single decks.

Mr. Bohannan (continuing): Mr. Angle, in view of the fact that your Producers Commission Association is one of the Respondents in this proceeding, and has not been represented at this hearing by counsel, is there any statement that you would like to make, either in respect to the things about which I have questioned you, or any other matter that you think is pertinent to this hearing?

Our association is not primarily interested in the level of charges, so long as those charges are enough to permit our agency to function efficiently in the marketing of livestock and build up a reserve sufficient to secure it against losses that might be temporarily sustained.

[fol. 462] Cross-examination:

Our association has been in business at Kansas City since 1923. Any savings above expenses made by the association are the property of the members. Any one who desires to do so may consign livestock to our association. In so far as I know there has been no inefficiency in our management. Of course, I do not know what transpired before I came to the market. I have been manager some five years past.

At the National Stockyards I was in charge of the shipper's room or publicity department. I worked some in the stocker and feeder department, and assisted the manager

in his work. I do not sell livestock, and have not sold any livestock worth mentioning. I am not termed as a salesman. I have tried to run the affairs of the Producers Commission Association efficiently and economically. I am fairly well satisfied with our present employees. During the past year our board of directors has considered the employment of additional salesman. The contemplated plan we had of employing additional men would have been as a supplement to our organization. Up to this date we have handled approximately one thousand cars more of livestock than we did during the same period in 1929. We were merely considering the furthering of our sales organization by departmentalizing our selling. I do not know how many cars of cattle per man our cattle salesmen handled last year. The number of cars that the salesmen in our organization sold last year is not a guide as to what they might have sold had they had sufficient livestock. My ob-
[fol. 463] servation is not limited to the work in my own organization.

Q. You have not been connected with any old line firms on the market?

A. No, sir; other than I can notice the volume of selling they do, and it is not difficult to ascertain the number of salesmen selling.

Q. Well, now, what particular firm did you have in mind in that connection?

A. I did not have any particular firm in mind.

Q. Do you know of any instance upon this market where the average number of cars of cattle sold by the individual salesman of any market agency on the market was more than 800 cars?

A. Do I understand you to ask, do I know of any salesman in any firm, that sold over 800 cars of livestock?

Q. No, do you know any firms where the average per car sales of its salesmen, classified as they ordinarily are, in the performance of their duties, amounted to as many as 800 cars a year?

A. I haven't made it my duty to trace down and check carefully the number of cars of livestock sold by the average salesman of the privately owned firms here at the yards.

We interviewed some cattle salesmen when we were contemplating the employment of an additional man. The

increase in our receipts has been both in rail and truck-in [fol. 464] shipments. I would have to look at the records to determine how many cars of cattle we handled in December, 1929, or during the current month. During this month we have handled approximately 150 cars of cattle. I presume the stockyard record of 1176 cars for the 12 months period of 1928 is correct. I do not carry the total number of cars of cattle we handle for the year in my mind. The cattle salesmen which we employed during the year 1929 were idle during a portion of the time. They were not idle two-thirds of the time. The customary hours of work vary somewhat with the season of the year and the volume of business handled. Our salesmen come to work from 6:30 to 7:30 usually. They remain in the yards until the trading is over, which is usually between one and three o'clock.

We have to wait from an hour to three hours to get over the scales during heavy runs, and before the salesman can get his tickets and mark them, the livestock have to be weighed. The yard boy can bring the tickets to the office, and the salesman can mark them there just as well as he can in the alley. Our salesmen do not always stay out in the alleys until the tickets are marked. Many times the jack pot stuff is weighed out late in the afternoon, and the salesman is in writing his letters while the boys are finishing up the jack pots.

In my estimates as to the number of carloads of livestock that a salesman could sell, I presume that he would be properly supported with the necessary yard help.

[fol. 465] Q. Well, now, were you including, in your salesman work, the time necessary to make up those tickets and the time necessary to write the letters that a salesman has to write, explaining his sales, and all that sort of thing, and still giving that salesman the benefit of the same length of day, that is not working, starting in at 6 o'clock in the morning and working until 8 o'clock at night, or were you assuming some hypothetical condition where the salesman sold livestock all day?

A. I was assuming, in my answer to the question, to the number of carloads of livestock that a salesman could sell, that he would be properly supported at all times with the necessary yard help and sorting and weighing and watering and getting the tickets around for him to mark, con-

sidering, at all times, that the salesman's time is the most valuable time of anybody in the yard employ, and that less expensive help should be employed to support the salesman in his work.

Q. And you were figuring on having your less expensive help mark the salesman's tickets, were you?

A. In many cases, yes, the yard men mark the tickets.

Q. Without the aid of the salesman?

A. Absolutely.

Q. Is that the practice of your firm regularly?

A. Well, we frequently have the price and the number of animals and everything recorded on the sales card at the time the sale is made, and it goes right to the scales with the shipment, and so long as the buyer and seller [fol. 466] agree on the price, certainly a competent yard man can write it down just as easily as the salesman. At least, that has been our experience.

During the year 1929 we had three cattle salesmen part of the time and four the greater portion of the year. I have no reason to doubt the figures of the Government auditor showing that our cattle salesmen handled an average of 432 cars per salesman.

Q. Well, you mean that your salesmen, as other salesmen, perform other duties, in addition to their salesmanship, do they not?

A. I mean that they could sell more livestock, each and every one of them, if they had it to sell.

Q. Then, there was no need for having this supplemental man in your judgment, to handle that additional two or three hundred cars that you have had this year?

A. I do not consider that our increase in the cattle department amounted to two or three hundred cars, and consequently would not want to essay a reply on a question and state that was all the business we had handled in the way of an increase over a year ago.

The scale congestion in the yards ties us up more or less throughout the year in our butcher cattle department and also in our hog department. It oftentimes causes at least two hours or more delay in getting our hog tickets. The congestion in the butcher cattle department is due to the large number of head of butcher cattle that have to go over these scales and the number of firms using the same [fol. 467] scales. We handle a considerable amount of drive

in business, and the number of scale drafts is large. We have a separate scale for the carload cattle. We have a set of rules at the yards that governs us, and one of these is that no firm shall advertise that it has superior scales or pen facilities over his competitor. We have always tried to comply with that rule.

Our association is incorporated under a Kansas statute. Every cooperative in this country must comply with the Capper-Volstead Act, as well as with the particular State laws under which it is incorporated. One of the requirements is that we must not sell more livestock for non members than we do for members. We do not charge any membership fee. Not all who ship to us are members. I do not know exactly the percentage of our shippers who are members. When a man becomes a member he signs an application blank for membership. He does not agree to let us market all his livestock. The purpose of our advertising and soliciting is to get business, and make those persons members either before or at the time they ship or afterwards. The purpose of our radio service is to inform our members and non members as well, and we have no way of determining who shall receive our message. We are inclined to believe that our radio broadcasting has meant a field of service to the livestock trade, particularly among those shipping to the Producers Commission Association. Our broadcasting was inaugurated something over four years ago, [fol. 468] and was on the air before the exchange started its broadcasting, and probably the exchange broadcasting is just a duplication of our broadcasting service. We are not trying in any way to duplicate the United States Department of Agriculture market reports which were on the air before we started our broadcasting. We give our time to other phases of the livestock marketing subject instead of the day to day tendency in prices on the market. I did not know that the exchange had a rule which prohibits its individual exchange members from using a radio as a means of advertising or soliciting business. I do not know of any such provision in the Market Practice Agreement.

My firm gives about 300 free subscriptions to the Daily Drovers Telegram. Each subscription costs a little less than $5.00 per year. We have tried to confine those subscriptions to livestock men and other men who are in a

position to need market news service. There are persons who have asked for it whose commissions would not be sufficient to pay for the paper. We do not give it to every customer who requests it. 6 or 7 years ago we did not send the Drovers Telegram complimentary to our customers. The competition was so keen and the privately owned firms played that point up with the customers so strong that we finally decided to send the paper. Our subscription list has not increased since the Exchange members ceased sending the paper out. We are continuing to send it out now because our competitors used it as a weapon at one time and we figure that it would be [fol. 469] well to carry these customers along. It does not necessarily follow that our policy should be the same as that of the Exchange. What we will do in the future about it is a matter to be determined by our Board of Directors. Our other paper is published by the National Publishing Company which is a subsidiary of the National Livestock Marketing Association. Its office is in Chicago. Our firm has no stock in it. I was not present in Chicago when the details were agreed on in February, 1930. The capital of this publishing company is around one hundred thousand dollars. My association subscribed to the capital of the National Livestock Marketing Association. I do not recall the amount. The National Livestock Marketing Association was organized by the terminal livestock cooperatives over the country, that were already in existence at the time it was organized. I think one or two new ones came in which were just getting into business. The Farm Board approved their set up. It was a set up consisting of all those which had been connected with the producers organization. I believe we had 17 agencies. They are located at the markets at Fort Worth, Denver, Sioux City, St. Joseph, Chicago, Peoria, St. Louis, Indianapolis, Evansville, Cleveland, Cincinnati, Pittsburgh and Buffalo. There are other market agencies located at Columbus, O., Springfield, Ill., and Cedar Rapids, Ia. For our stock we paid cash and part future payment. If I remember correctly it was around $2,000 which [fol. 470] we paid in cash on the first payment. The subscription was based upon the relative number of carloads of livestock handled by our agency. I was not here in 1924, but I believe that the agency did not make any money that year. Our agency was making money the

first 7 months of its existence and it created a very large volume. A boycott was thrown on the firm which destroyed the volume of business and with an overhead built up to handle that volume a loss could not be avoided. I visited the yards at that time. All our agencies started on borrowed capital. We had made no other deposits when we went into the Market Practice Agreement to guarantee our trades other than what we had before. I think that agreement was taken exception to by the Board of Directors of the Producers Commission Association on the strength of the fact that it was an agreement which would prevent the association from its fullest development in carrying on its livestock marketing work. I could not say off hand what our deficit was at the end of the second year or any other year. There was a deficit in 1924 and from that on it was liquidated gradually until it was cleared up. (Whereupon counsel for Respondent requests the production of the financial audit of the Producers Commission Association for each year during the period of its operation.) (Witness stated that he did object to bringing the financial history of his association into the record unless it was to bring something in particularly pertaining to the case at hand and then only upon the authority of duly elected officers of the associa-[fol. 471] tion. During a part of that time the witness states that his association did not enjoy normal trading conditions and that over half the volume of business was taken away because of those conditions. (Examiner deferred ruling until the following day.)

There are times when the items of collection are sufficiently long in getting around that money paid out is paid out before those items are collected but the bank gives us credit, and to that extent, I do not consider that our account is overdrawn. The bank got practically all the interest which we paid last year, as shown by our audit. That was paid to banks, as interest on carrying our floating obligations. I have a copy of our membership application form which was requested, and a statement of the number of persons added to our complimentary list to the Drovers Telegram, up to 1930, which number is 76. The personnel of the countrymen feeding livestock changes from season to season and the number that have ceased to handle livestock in our trade territory

over the past few years has been especially large. We find that there is a heavy turnover in the persons that get the Drovers Telegram. So far as I know the balance sheets shown in the Government audit are correct. I think we have deposited $10,000 in securities with the Market Practice Committee. Those securities do not represent money belonging to this association. It belongs to member agencies of the National Livestock Producers Association. Some one else receives the interest on those se- [fol. 472] curities. The National Livestock Producers Association is being disorganized and the members of that association are now members of the National Livestock Marketing Association. The National Livestock Producers Association which developed the 12 marketing agencies which were all in existence at the time this deposit was made was interested in the development of all its agencies. It is due to the common interests that all agencies have that they offer to carry this deposit for us until such time as we wish to take it over. Our agency has never paid a refund on patronage dividends to shippers. We used borrowed capital during the year 1929. When we buy a lot of cattle for a customer we pay cash and accept his promise to pay. We carry the investment for 5 or 6 days and the bank charges us a clearing fee to clear that check. That is a cost of marketing to us and I wish we had some way of making the customer pay it. I believe we paid 8% on the money which we borrowed from the bank. According to the audit the total operating expenses were $76,211.57. With us, a fellow works for his money before he gets it and we have the commissions collected before we pay our men their salaries. I believe there are months in which we do business at a loss and I think that would be true of a great many market agencies. I think that it is reasonable to assume that 1/12 of that amount might normally be needed to operate a commission house when the volume ot expenses is that much. We have some money invested in equipment and we purchased new equipment since January 1, 1930. [fol. 473] There is no reason why a commission firm or market agency should not have as attractive an office as the average business man. I do not regard our investment in furniture and fixtures as excessive. The Producers Commission Association did not have during the year, 1929, $40,000 in working capital, and I cannot say

that we needed it, and working with the capital that we did have we did not feel handicapped in giving service to our customers. Our business overhead in 1929 approximated 1,000 cars of purchases of livestock. In practically every case a draft or check was drawn to secure the payment. That volume of our business was probably proportionately greater than that of the average firm. I do not recollect the amount of the hog dockage in 1929, but it was paid as soon as we were billed for it I consider the 50¢ a car paid to our national organization as a proper expenditure.

Under conditions as they actually existed in 1929, the amount spent by my firm for advertising was reasonable and proper. I feel that the amount expended was larger than it should have been, for the reason that the Producers Commission Association is gradually building back the volume which it lost in previous years. In 1929 our business showed an increasing volume. The general talk throughout the nation in regard to cooperative marketing led us to feel that our association should get in line with the national program. Our association has not taken any position or action with respect to market [fol. 474] charges at this market. The national association is the clearing house and headquarters for all market agencies and it carries on the national legislative work, rate cases on transportation charges, and other things that have a national aspect to them. It has been the policy of our association ever since it was organized, to promote grower owned and grower controlled livestock marketing associations. This program received the Government's approval in 1929, and we took it as a signal for our association to advertise more extensively than we had previously done. I cannot say just how much was expended on specialties and novelties. The chief specialties were canes and pencils. Practically all of our canes were passed out through the office and mostly on request.

I have read technical bulletin No. 57, issued by the U. S. Dept. of Agriculture, entitled "Cooperative Marketing of Livestock in the United States by Terminal Associations." To a certain extent we have followed the suggestions on page 35 of this bulletin, which says, "More and more associations are using short articles in local papers, which carry information about the company and

sales and purchases made for stockmen residing in the circulation territory of the paper." This bulletin also refers to broadcasting of market news, and we do that. To a certain extent we advertise in newspapers and farm magazines, as suggested by this bulletin. In a few instances we have possibly placed advertisements in spe- [fol. 475] cial publications of other cooperatives. To a certain extent we pass out literature, as at county and State fairs. I do not recall that we maintained a booth at any fair in 1929. The bulletin also refers to country road signs, and we follow out that program. We have placed road signs on the leading roads coming into Kansas City. I do not know how many of these signs our association maintains; I would say approximately 200 or more. Our association has followed a great many of the suggestions contained in this bulletin. We have sent our financial statement to our membership at times, giving volume of business handled and earnings made. When it is convenient and I think it is practical, I follow the practice of supplementing the work of our field representative with publicity.

(Examiner rules that counsel for respondents has a right to examine the witness on anything pertinent to the matter of cost, expenses, and so on, from January 1, 1929, to date. Counsel for respondents offers to prove the results of the financial transactions of the Producers Commission Association beginning with the year 1923. The offer of proof was denied.

(Counsel for respondents requested the witness to produce the general ledger of his company showing its financial operations during 1929.

Counsel also requested the production of the private ledger, if one is kept, cash book or cash journal, the minutes of the directors' meetings, pay roll, check stubs, and [fol. 476] records of purchases and sales.)

The records of the association are in my custody in the absence of the president and secretary. (Witness stated that when the material was being collected for this hearing, "I agreed to an exchange of material taken from our books by the Government auditors and similar material taken from the respondents' books. I thought we were giving the Exchange members sufficient information from

our records. I would decline to bring these books before this hearing to be spread before the record."

(Witness states that if there is additional information needed from his books, it is agreeable to him that a representa-*vie* of the Department go and get such material. Examiner overrules the witness' objection and rules that the books should be produced.)

I tried to make the different items of expense reasonable during the year 1929. Taking all the items as a whole and in a general way, I would say they are reasonable. I would say that probably our advertisement was a little out of balance compared with what it normally should be. The expenses of salaries in our organization, as regards salesmen, are probably a little out of proportion to what they would normally be if the association was getting as much livestock as it could sell. Our association has tried to employ and maintain a complete selling personnel for each class and grade of livestock in each department. We have [fol. 477] not consciously followed the suggestion on page 33 of Bulletin 57. Our plan of getting out circulars and the information contained therein have varied somewhat in the past several years. I feel that it is desirable for the manager of our association to get into the country, to get a check-up on his association's services, to get the feeling of the men who are being served, and pick up from them the problems which they feel need to be solved. I would say that he should spend a small portion of his time in the country. Strictly speaking, I doubt whether we have an employee who might be called a field man. Our field work, or soliciting, or country trips for the purpose of invoicing, inspecting, or sorting livestock, or making country meetings are done by the regular resident employees of the association. They are used in accordance with the demands made upon us from the country for services. As stated on page 31 of this bulletin, the field service varies with the locality. The item of refused purchases, amounting to $1,182.23, appearing in our audit, represents loss of several purchases. From 1929 there was considerable fluctuation in the price of stocker and feeder animals. In view of the fact that our association purchases livestock rather extensively on country accounts, both by mail order and by telephone and tele-

graph, the losses during this declining period were the greatest we have ever sustained. That loss is out of line with our normal experience in buying and was greater than the loss suffered in the four years' previous buying. I agree with the statement on page 19 of the bulletin in [fol. 478] regard to the responsibility of the salesman. I also agree with the statement on the same page relative to the service of yardmen. I agree with the statement on page 37 of the bulletin relative to the importance of maintaining and keeping trained employees. I think there is a limit to which salaries can go, but as a general practice I think it is good policy to keep trained men, even though it is necessary to increase their salary. We have not decreased salaries and increased advertising expenses. I agree with the statement on page 23 of this bulletin in regard to the necessity of maintaining an adequate force of well trained employees in the office. We employed an office manager during the last 2 1/4 months of 1929. He was employed the entire year of 1930. We had some clerks who worked only a portion of the year. Some of them were experienced help, and others were used on a type of work which did not require skilled help. I have no reason to believe that the figures on page 75 of this bulletin, relative to the volume of livestock handled by our agency from 1923 to 1926 inclusive, is incorrect. I could not verify those figures from memory. (Witness is handed a letter written by his organization containing a statement in regard to having the best pen location in the hog house.)

This is a letter written by one of the salesmen of the Producers Commission Association. He has been advised that it is not in accordance with the practice of the yards to make such a statement. It is a relative matter in the [fol. 479] mind of every commission firm as to whether it has the best pens. It is difficult for me to say whose pens are the best in the stockyard. I did not like my salesman putting that statement in there, and he has been warned not to do that again.

Respondents' Exhibit No. 14

Whereupon the letter referred to, being marked Respondents' Exhibit No. 14, was received in evidence.

We are making loans on livestock, and we secure our money for that purpose through the National Livestock Credit Corporation of St. Louis, which is a credit corporation organized to discount paper for certain cooperative marketing agencies. That organization was formed in 1930 by several of the member agencies of the National Livestock Marketing Association. Our agency took part in its organization. I have not been advised that the National Livestock Credit Corporation is advancing credits from Farm Board money. It is the successor to the Producers Livestock Credit Corporation, and it gets its money from the Federal Intermediate Credit Bank at St. Louis. I do not know the exact cost of the money to our credit corporation. I know that it plans to secure some funds through the National Feeder and Finance Corporation to help increase its capital stock. The funds of the National Feeder and Finance Corporation come from the National Livestock Marketing Association. The plan was to loan five million dollars to the Federal Intermediate Credit Bank, under which livestock loans [fol. 480] could be discounted up to fifty millions dollars. The Producers Commission Association at Kansas City is not loaned any money coming down to us through the credit corporation from the Federal Farm Board. We do not know the interest rate that the National Livestock Marketing Association is paying on any money. We are charging our borrowers six per cent. It depends on the cost of setting up the loan whether any additional charge is made. We charge the borrower additional cost in making his loan only when the livestock is being financed, that is, not being purchased through a terminal market or through one of our representatives. Our association makes no profit on these loans. At the present time I do not know what the discount rate is at the Federal Intermediate Credit Bank at St. Louis. My association is a member of the National Livestock Marketing Association. The credit facilities we offer to our customers and the livestock producers of this trade territory have been available some four years or longer. They are gradually being used more extensively, and have probably resulted in some increase in our business. We have not advertised our credit department to any extent. We sent out a circular under date of December 11, 1930, to 1500 livestock men, in which the interest rate on our loans was mentioned.

It is my understanding that the Intermediate Credit Bank is not prejudiced against any particular group of livestock men in discounting their paper.

[fol. 481] Respondents' Exhibit No. 16

Whereupon, Respondents' Exhibit No. 16, same being a copy of the market letter of the Producers Commission Association, under date of December 11, 1930, was received in evidence.

I have always heard that commission firms loaning money require that livestock be sent back to them for sale. Our association feels that in the protection of our interests we would not care to loan money on a product which some one else might sell in competition with us. I believe that our reason for selling the livestock on which we have mortgages is for our own interests.

Respondents' Exhibit No. 12

Whereupon, Respondents' Exhibit No. 12, the same being a mimeographed letter of the Producers Commission Association, a credit statement, and a form of application for loan, was received in evidence.

Respondents' Exhibit No. 15

Whereupon, Respondents' Exhibit No. 15, the same being a copy of an application for membership in the Producers Commission Association and association membership in the National Livestock Marketing Association, was received in evidence.

Respondents' Exhibit No. 17

Whereupon, Respondents' Exhibit No. 17, same being a copy of the rules and by laws of the Producers Commission Association, was received in evidence.

[fol. 482] We pay the 50 cents per car for the support of the work of the National Livestock Marketing Association out of the commission charges collected. We do not deduct it from the shippers' proceeds. We cooperate with county agents in carrying on our work—county agents are the representatives of the State Agricultural Colleges and the

United States Department of Agriculture located in the several counties surrounding this market. They are paid by the State and Federal Governments, and by local Farm Bureaus in some counties. County agents in this territory are not taking any of their time to solicit shipments for this association. I would say that in the neighborhood of one hundred county agents are located in the counties from which livestock is consigned to this market.

The Producers Commission Association did not become a member of the National Livestock Marketing Association without the other agency and all other terminal cooperative livestock marketing associations in this country being given due opportunity to come into the system that was finally approved by the Federal Farm Board. I do not feel that it is by any act of the Producers Commission Association that any other terminal cooperative commission agency here or elsewhere is not in this system. I believe that the agricultural cooperatives are in a position to go forward and increase their business and increase their service to the grower.

It is generally correct that the Federal Farm Board de- [fol. 483] sires to have only one selling agency on each market. The members of the Farm Board have endeavored to get all terminal livestock cooperative marketing associations to come into one single national program with one organization. I believe we loaned more money this year than last year. The borrower, in his application, agrees that in case the loan is made to sell his livestock through a terminal agency of the National Livestock Marketing Association. To my knowledge there had not been any previous allotments of money to the Producers Livestock Credit Corporation. I am reasonably positive that all of our paper which was discounted in 1929 went through the Intermediate Credit Bank at St. Louis. We have made loans whereby we collected an inspection fee when the loan was made, and we have oftentimes collected the inspection fee when the loan was closed out. Without exception, every loan of livestock that we have set up in the country we have charged an inspection fee for setting it up. I believe that persons buying cattle on this market should pay for those cattle in such a way that the commission firm buying the cattle would not be compelled to pay interest charges

on the investments for several days after they have paid for the cattle.

When we get an order for livestock the fact that we fill it on this market may or may not improve the demand for livestock on the market. When we go out to buy livestock we have to buy it in competition with other buyers, and [fol. 484] when we find the livestock that we want we may have to pay a little higher than somebody else if we get them. In the process of filling orders competition is increased, and, therefore, we help to sustain prices. I think it has a tendency towards his favor in shipping livestock to this market.

We have all kinds of shipments of stocker and feeder cattle to this market. We have many cattle run in straight carload lots, and quite a number of cars of fairly uniform quality and sizes. Practically all grades of stocker and feeder cattle are available on this market. I have never added up all the grades or classifications of livestock that come to this market, but there are many available. We have steers in the slaughter division, and they are divided into weighty steers, medium weights, long yearlings and yearlings, baby beeves, and light yearlings. Then there is a further subdivision as to fancy, choice, good, medium, common, and culls. The factors which affect price are demand and supply, the amount of flesh, the State or territory that the cattle come from, and the quality.

Redirect examination:

We have not employed additional salesmen which I referred to. (Witness produced his records as to volume of livestock received in 1929 and 1930 and such records were examined by counsel for Respondents.) Our association handled 806 cars more of livestock the first eleven months [fol. 485] in 1930 than the same period of 1929. That increase covers all species and includes inbound and outbound carloads and trucked in business. It also includes 89 cars handled in the country. The increase in inbound receipts for this period in carloads and trucks was 453 cars. Whereupon the witness was temporarily excused.

[fol. 486] A. J. MAURER, a witness called by the Government having been previously sworn, testified as follows:

Cross-examination (continued):

Stocker cattle are entirely different from packer cattle. When you buy a stocker steer you are buying one that is thin and one which a man expects to carry along on rough feed for several months. You have to know whether the steer will develop into a good smooth beef steer and will be a fast grower. The buyer must be judge enough to look into the future of the animal. In buying a feeder we look for a good many of the same qualities as we do in buying a thin one. His hide must be mellow and he must have good conformation. In their purchase or sale you have to take into consideration a lot of factors that relate to the breed and the origin. You can tell the origin of most cattle by the looks of them. A man might be a perfect judge of livestock and be a poor trader. He has to be a real trader to be a successful operator. He has to have intuition to feel what is going on in the market. A man must have initiative and be able to form his own judgment. The buyer must have the knowledge to know whether he is filling the order. You can substitute sometimes if a market is scarce enough but if you go to substituting cattle you will lose your business.

It might take me two or three years to get another organization as good as my present one. Every part of that organization has some value. I have a boy that follows me [fol. 487] around and if he is a wide awak- youngster he will observe cattle and call my attention to things that I might overlook. When I was a packer buyer I took pains to train and develop young men and boys who were assisting me in order that they might work into higher positions. I gave them special training with reference to obeying the rules of trading. It was a hobby with the packers that they must live up to all the rules of the Exchange. In the buying of the fat cattle I don't believe I have lost two per cent of my customers since I have been in business. My business has been increasing since I have been in the order buying business. I buy for packing houses in the East owned by Swift & Company and by Armour & Company. The Omaha market has a more uniform type of cattle than any market in the country that I am familiar with. There is

more of a change with respect to stocker and feeder customers. There are some men that go out of business on the stocker and feeder end of it. I retain the majority of my old customers. My gross commissions and net profit from 1922 up to the first eleven months of 1930, inclusive, are as follows:

"1922—Gross Commission	$13,567.26
1922—Profit	3,933.93—No salary.
1923—Gross Commission	14,722.00
Profit	624.80—No salary.
1924—Gross Commission	20,289.00
Profit	8,533.28—No salary.
1925—Gross Commission	20,875.00
Loss	2,994.94—No salary.
[fol. 488]	
1926—Gross Commission	26,692.84
Profit	6,065.42—No salary.
1927—Gross Commission	35,740.50
Profit	7,478.09—No salary.
1928—Gross Commission	34,387.71
Profit	307.10—No salary.
1929—Gross Commission	38,845.33
Profit	11,609.91—No salary.
1930—Gross Commission	32,442.35—11 months.
Loss $916.15	6,783.85—11 months.
Sal. 7,700.00	

Average profit 9 years $4,704.00."

I am afraid we would have a mighty unsatisfactory market if it were not for the Livestock Exchange. I believe the clearing house facilities, hog dockage system and the other systems for which it provides the working machinery are essential to the proper functioning of the market. I have not known many men engaged in the commission business on the Kansas City market to grow rich out of the operation of the commission business. I have known a few commission men who seem fairly well fixed and prosperous but they made the most of their money out of the cattle loan business. It has rather been the history of anyone who continues to make cattle loans while they would prosper for a few years there was always a break which took away all the profits. I do not remember a single one who had over

$40,000 when he passed away. I have a ranch out in Colorado.

Redirect examination:

It is to the interest of the order buyer to have a plentiful [fol. 489] supply of cattle on the market. A large supply and a low price may induce the packer buyers to buy heavier than it is wise. It is not always to the interest to the buying side of the market to have prices bid down to the lowest possible level. The buying side of the market is always trying to get the livestock just as cheap as it can. It is natural that the livestock markets should spring up along the Missouri River. The river was much closer to the point of production and it is economical to kill the beef close to the point of production and ship the dressed beef. The stockyards antedated the big packing houses. The big packers came later. Most of them get a bonus and they also found it was to their interest to ship beef rather than live cattle. The major beef demand is still in the east but the demand in the middle west and the west has increased with increasing population. The demand has increased with the increasing population but I do not think the consumption of beef per capita is quite as great as it was on account of the high prices. The greatest change in the methods of buying by packers has taken place in the last ten or twelve years. This change has come about because the packers have had to make their business more efficient. There has been a gradual tightening up ever since the war. I feel that there is a revolution imminent in the distribution of meats. There is too great a spread in the price the beef costs the retailer and the price it costs the consumer. It either involves retailing by the packers or the packers [fol. 490] putting on a method whereby the retail overhead can be reduced. Cattle actually shrink in beef as they are kept off of their regular feed and water. I have many a time cut a lot of cattle in two, half of them being killed here and the other half being shipped to New York City. The shrinkage runs anywhere from 1½% to 3%. The seller usually knows how the cattle have been handled and the buyer doesn't. The buyer has to go by the looks of the livestock. We get fooled once in a while. There is a richness to the hair of a corn-fed animal that you cannot get in a short fed one or a grass one. Practically all the cattle

that come out of Fort Worth are grass cattle and they come in big strings. St. Louis is a little on the same order. St. Louis has a class of cattle from southern Missouri that are a little on the gambling order. They are fed on blue grass and finished up on corn. In the wintertime Chicago gets as much an assortment as any market. The bulk of their good cattle are easy to buy and the western are a pretty uniform type.

Armour & Company paid a higher salary to its buyers at Kansas City than it did at Omaha and St. Louis. They did not pay more to their Kansas City buyers than they did to their Chicago buyers. Kansas City is the second largest cattle market in the country. There is a larger percentage of well bred cattle than there was a long time ago. I don't think it has improved materially in the last ten years. The conditions which I have described with respect to the up [fol. 491] and down of quality through good breeding apply to the Kansas City territory about the same as elsewhere. I would not say that there are kinds of cattle coming to the Kansas City market that do not at all go to the other markets. I think we get more of them than other markets.

The packers break their men in very gradually. I employ a similar method in my business. If a man wants to go down in the stockyards and start in the order buying business he can start. I think it would reflect on anybody who intends to do business with the public if he didn't do the right thing. Trading on the market could not go on very good if the parties had to draw up and sign a legally binding written contract on each transaction. The only reason I know that the subsidiaries of Swift & Company and Armour buy through me rather than through employed buyers is that I give them a better service.

I have one buyer that I trained. The other cattle buyer was with Wilson & Company for 14 years before he came with me. The one I trained entered my employment as a weight taker. I paid him an errand boy's salary. As he showed ability and advanced in his duties I advanced his salary gradually. If he had not shown himself worth his salary he would not have been advanced. I had to compete for the services of the man I employed from Wilson & Company and I give him a salary accordingly. There is competition for the services of a good man. I haven't a man working

for me what they have not tried to take away from me. I have had one, two or three taken away from me because [fol. 492] they were offered more money.

Recross examination:

I have two men working for me now who have been offered quite a little more money than I have been paying them. I cannot afford to pay them any more. They tell me they would rather work for me, and they know that they will always have a job as long as I am in business. I did not promise them more money. I try to be caréful and economical in my transactions. I gave $167 for charity which went to the Community Chest. If a man did not use a telephone, and use it very frequently, he would be out of business. Whereupon, the witness was excused.

[fol. 493] Mr. L. G. Trickett, a witness called by the Government, after being sworn, testified as follows:

I am secretary and treasurer of the Kansas City Stockyards Company. I have supervision and custody over the records of the company.

Government Exhibits Nos. 8-A to 8-H

These are the annual reports of the Kansas City Stockyards Company for the years 1922 to 1929, inclusive.

Our chief clerk has a record of the commission firms, and the information as to the commission firms on the market contained in the annual reports is compiled from these records. Each commission firm files a bond with the stockyards company. The information as to the receipts and shipments of livestock is taken from the records of the stockyards company. The railroads bringing livestock to this market serve the southwest territory, Kansas, Oklahoma, Missouri, Texas, some Nebraska, Colorado, Utah and Wyoming.

Whereupon Government Exhibits No. 8-A to 8-H were received in evidence.

The stockyards company keeps a record of the number of cars of each species of livestock consigned to each of

the commission firms monthly. That information is taken from our train sheet or unloading record.

[fol. 494] W. B. Ecton, a witness, called by the Government, after being sworn, testified as follows:

I am a cattle salesman for the Producers Commission Association. I have been connected with the livestock industry since 1887. I went into business with another party at the Kansas City stockyards. At that time I would sell my sheep, then go to the hog alley and sell the hogs, and then go back to the cattle alley. Now I sell fat cattle. I went to Chicago in 1893 and sold cattle there for 20 years. I have been with the Producers Livestock Commission Association since its organization on the first day of March, 1923. I have an assistant. He assists me in selling fat cattle, and also sells stockers. He was a Kansas man, and looks after the Kansas trade principally. The heavy days are Monday, Tuesday, and Wednesday. I arrive at the yards about seven o'clock in the morning. The market is supposed to open at eight o'clock, and lots of times the buyers do not start before nine o'clock, or later. We go out at eight o'clock and get our cattle all prepared for sale. We have yard men for watering and feeding and driving them to the scales after they are sold. When the cattle need sorting, I sort them with the assistance of the yard men. The purpose of sorting is to shape the cattle up where we think the shipper will get the most money. Very little sorting is required in the fat cattle. I aim to sell these cattle the way they will bring the most dollars. I try to keep as many together as possible. The cattle [fol. 495] which come to the Producers Commission Association come from every direction. We get them from all the States that are tributary to our market. We get all kinds. The yardman is supposed to do the weighing, but if they are all busy we help them out. If the market is good, we get through by 12 o'clock, and if the market is slow we may be there until three o'clock.

I do not do much office work. What I do is mostly in correspondence with the shipper. I do not take care of all the correspondence. Mr. Angle generally does that. I might write to a particular shipper regarding a sale that

I made. I think there are a great many localities where the trade has turned toward the Kansas City market from the different territories. Some of the heavy cattle have gone to Chicago. We are getting a better class of cattle than we used to. They are more uniform, and we get more good cattle. There has not been much change in the sorting required in the fat end of the cattle. The sorting comes in the stocker end and the butcher stuff. With respect to that, there is a great deal more sorting now than formerly. The packer buyers try to buy them as cheap as they can, and we try to sell them as high as we can. I have not seen much change in the buying methods of packer buyers. They buy the fat cattle. There are days when I sell all the fat cattle for our firm. I used to buy quite a few cattle, but we have men who do the buying. Some days it would take us longer to sell than it would take a buyer to buy cattle. [fol. 496] I should think it would be an easier matter to fill the orders where you have the man with you who sees just what he wants. Generally, I think it is easier to fill the buying order than it is to sell.

The number of head in the car makes no difference whatsoever in the time required to sell a car of cattle. Butcher stuff is sold most anyway you can. Different buyers buy it. Where there are mixed grades of butcher stuff in a car, it would take more time where there are more head in the car. The difficulty is due, not to the number of head in the car but to the mixture. That is generally true of stockers and feeders. We have lots of stockers and feeders that come in straight which can be sold in one bunch. Again, we might get a mixed bunch of stockers and feeders which would have to be sorted up. If they are good cattle, the same number of fat cattle trucked in are not any harder to sell than if they had come by rail. We have quite a number of consignments by truck containing as much as a carload of cattle. I do not handle "seconds." I am no good on them. I always tell the trader to take them to somebody else. They are generally hard to sell. They buy them too high, and they want to try to make some money on them. At times they fix the minimum price which they want to get. I think they are a detriment to our trade. If you are in the habit of selling seconds, and get a shipment of cattle from the country that look rather stale, the packers do not like to buy them.

[fol. 497] I cannot give you any estimate of the number of cars of cattle I have sold this year. I have sold 75 to 100 car- lots of days in Chicago. I never had that many here. I could not sell 75 to 100 cars a day at the Kansas City market under present conditions. There are days when you can sell a large number of cars. We have plenty of days when we can sell 40 cars of cattle quicker than we could sell three some other day. We do not seem to have the demand for this stuff that we used to. They do not have the orders for them. We used to sell a man a string of 15 or 20 cars. Now, if we show a buyer 20 cars and sell him two we have done pretty well. We have had days in which I have sold as many as 25 cars of cattle. One day this week we had 20 cars of cattle, and we got rid of them early. I sold the most of them myself. If the demand is right, we sell 25 just as easy as five. From September on through the fall of the year we have our heaviest run of fat cattle. Taking the market as it is, and considering how the cattle come, a salesman could sell more than 1500 cars of cattle in a year. I think he could sell more than 2000 cars in a year. I would be perfectly safe in saying that he could sell 3000 cars in a year. I am referring mostly to the class of cattle that I handle. In the feeder class, a man could sell more than that because they come in big bunches. I don't know how many a regular butcher man could handle. I do not think he could sell as many as [fol. 498] 2000 the way the shipments come to this market. The butcher cattle take more work and more time than the other kinds of cattle. We try to sell every day, and we carry over very little.

Cross examination:

Buyers are probably a little harder to please than they used to be. I do very little sorting on these fat cattle. I sell them as they come, unless there is something to take out, such as an inferior animal. I am trading with the buyers along just as I always have. There are about only four days in a week that we could figure on as active days. We get more fat cattle on Tuesday than we do on Monday. We get the big end of the fat cattle on the first three days of the week. I do not know how many loads of them I sold in 1929. Some days we would have very little to do. I could not say what percentage of my time was spent in

standing by. We have quite a few days during the year that we are not busy. There are quite a few days when we are busy. I am busy part of the time and part of the time I am not. I generally go home at four o'clock if I haven't anything to do. If I have anything to do I stay later. I try to work our cattle out thoroughly before I sell them. I had this assistant salesman in selling fat cattle in order to work up some new business. He had a lot of friends that would follow him. Friendships go a long way in the commission business. I could have gotten along without him. I have never attempted to determine how many loads of cattle I sold last year or this year up to date. [fol. 499] I was always ready to do my duty. The other salesmen in our firm had lots of work to do. They are there from early in the morning until the work is done. When there was work to do, they worked, and if they had nothing to do that was all of it. I could not tell you how much of their time they stood around.

Very few of the corn fed cattle have to be sorted. Fat cattle actually do not require much sorting. We may have to take off a few odds and ends once in a while. They sell better from some districts some times than they do from others. That depends on how they have been handled, and how they have been fed. The butcher stuff goes to a different class of trade from our fat cattle. We have different buyers for them altogether. The buyers do not altogether determine the price and value. We have some say so.

When I arrive at the yards in the morning I change my clothes, talk to a few shippers, and then go out into the yards and go to work. I go into the yards about eight o'clock. If there is any sorting to do I get my cattle prepared for the market and see that the boys get them watered and fed. The time required to prepare the cattle for market depends on how many I have. Sometimes it takes quite awhile. It might take an hour or longer. We generally start to water the livestock at eight o'clock. The yardmen assist in doing that. Then I lay in the alley and watch for some victim to come along, and try to sell him some- [fol. 500] thing. One buyer comes in at a time, and if we cannot trade with him we get another one. I have been out longer with three loads lots of times than I have with 25 or 30. It depends a great deal on the market you strike,

and the orders. The buyers want a certain class. The number you can sell depends a great deal on the condition of the market. There are days when we can sell a great many more cattle than we can on others. The demand has all to do with it. I sell them. I don't just dispose of them, and by selling them I mean I get the highest price for them. I price them, and if the buyer does not like the bid I go and get some one else. There are days when buyers are bidding lower than other days. There are plenty of days when we are through by 12 o'clock, and other days we are there until three selling cattle. If the first bid looks right I will take it.

I do not know the number of head of cattle that I have sold for my company. I have kept no account of it. The receipts are very uneven. I have no figures as to the variation in receipts during the different days of the week and throughout the different periods of the year. The fall months are the heavies- period during the year. I have known instances where shippers having 10 or 15 cars of cattle ready for market have consigned them to different firms. In my opinion, the shipper always got the worst end of it. There are not near so many shippers that do that today as there were years ago. When I started in for the Producers I bought some cattle for them. It was only dur-[fol. 501] ing the boycott that there was a big turn over in our customers. We had a good year the first year up until along in the fall. We lost a lot of our stocker and feeder trade at that time. It took quite a while to get it started back. I do not know anything about the turnover in the personnel of our customers on the buying side of the business. We hired the assistant cattle salesman when our business was growing, and we thought he had a good following. I thought he was a competent cattle salesman or I would not have hired him. He goes to the country. I go out very little now. I am letting some of the younger lads do the running around. I would rather be home selling cattle when they come in. His trade has always been the Kansas trade. He does not handle Kansas cattle exclusively.

Redirect examination:

There are 208 active market days during the year. If you looked around the yards there would be a lot of cattle

salesmen going at 12 o'clock, if they got through down there. A lot of them leave the yards whenever they get through. I never heard of it if they stay there until 10 or 11 o'clock at night. There is nobody working on Sunday, unless it would be the office men or the watchman. I am of the opinion that some cattle salesmen stay in the yards longer than I do, and a lot of them stay a whole lot less time. I have seen them leaving early. The ability and the following which a salesman has count a whole lot. I try to keep myself informed as to the general market [fol. 502] quotations. I try to keep posted as to the market and its condition by looking at our own sales and other sales and reading the market report. I think the prices received for livestock by our firms compare with any other firm in the yards. I think we get as good prices as any other firm. I go by the receipts at this market and other markets. That information is posted early in the morning. We get the Daily Drovers Telegram, which contains a market report. It comes out about half past three in the afternoon, and I generally look it over then. There is no doubt in my mind but that a cattle salesman could handle three thousand cars in a year. I have never had a chance to handle that many on this market, but I feel sure that it could be done. The Producers Commission Association commenced business on the first of March, 1923, and the boycott began in the late fall of 1923.

Recross-examination:

The boycott hurt our stocker and feeder business worse than anything else. I have nothing to do with the inside work. I am of the opinion that we always had insurance. I don't know the number of head of cattle handled during the different years since our firm has been in business. The receipts have a great deal to do with how many head of livestock one can properly sell. The condition of the market has a great deal to do with it. It is necessary for our association to make constant efforts to get new business on the buying side of the market. I certainly think it [fol. 503] takes training and experience to make a good cattle salesman. He occupies a position of responsibility as a salesman. His competency should be of value to the man whose livestock he sells. I do not think that the ordinary farmer could come in and do an adequate job on

the yard in selling his own livestock. We have to be on good terms with them, and show them that we are always straight and square. There has been a tremendous change in the way livestock has been fed and fattened for market during the last 10 or 15 years. There is a considerable difference in value depending on the manner in which the livestock has been fed. The value runs anywhere from 3½ to 14½ a hundred, and a few years ago it used to run from 2½ to 4. It takes just as much judgment when we were selling at four as it does now at 13. The difference has not added to the responsibility of the salesmen. I don't think you could slip any dollar or dollar and a half a hundred on good cattle just now. The differentials between the different grades of cattle are constantly changing. I keep posted on the receipts from day to day, and I often compare the month's receipts.

Whereupon, the witness was excused.

MR. HOMER G. BURNS, a witness called by the Government, after being sworn, testified as follows:

I am employed by the Packers and Stockyards Division [fol. 504] of the Bureau of Animal Industry, United States Department of Agriculture. I am an accountant. In my employment I am engaged in making audits and investigations of commission firms, stockyards, and packing houses. I have always held some accounting position since I was out of high school, and have completed a course of accounting in the Tanner-Gilman School in Chicago. I have done various studying continually in the accounting line. I have been engaged in accounting work in the enforcement of the Packers and Stockyards Act since October 6, 1924. A recent audit was made of the business of the market agencies who are respondents in this prece-ding. This was under my supervision and direction. It began on April 15, 1930, and was concluded in the early part of August. I was appointed to supervise this particular assignment. Mr. John J. Bachmann is my immediate superior.

(Witness gives names of those who worked under his direction, including those who are accountants and those who are not accountants.)

Those who are not accountants were assigned to tabulating the receipts by mode and by species, also, the purchases of the market agencies under this investigation. The auditing work was assigned to the accountant. I made several of the audits of small firms. It was our endeavor to standardize the audits so that they would be of value for comparative purposes and for distribution of both the income and the expense. We prepared a copy of instruc- [fol. 505] tions to each auditor that he might follow in order to keep the audits standardized. If problems came up which were not adaptable to that form, the matter was discussed with me. The main difficulty that the accountants had was in the allocation of the expense to the legend or the class that we had given in the instructions. The difficulty arose chiefly out of the manner in which the records were kept by the various commission firms. Minor differences arose as to whether an item came under operating expense or non-operating expense. We tried to maintain the sequence of the various items of income and expense throughout each audit, and the audits will be found to conform to the instructions which were given to the auditors. Each of the various market agencies keeps a ledger, cash book, and a sales journal, in most cases. They also keep account sales and account purchases. At times we may have consulted other minor records. The first act was to take off a trial balance as of December 31, 1928. Then we took off the closing trial balance for 1929. Those two records, after a complete check had been made of the assets, income, and expense, were incorporated into what has been referred to here as the Blue Audit. A complete analysis appears in the work papers. The work papers are the accountant's first move towards consolidation of the data for the final report. The trial balances are the principal papers in the work papers, and are supported by the detail taken from the records of the firm covering each account in the work papers. The [fol. 506] Blue Audits constitute the final statement, and are the result of the examination of the records of each individual agency. The Blue Audits are prepared from the work papers. I have the original set of work papers for each firm. For the purpose of explaining the various sched-

ules and exhibits contained in the Blue Audits, I will select Firm No. 54, as I think it is more of a representative firm, and because the nature of the business takes in all the various branches. Before making this audit, I assisted in making audits at the Omaha market for rate making purposes in 1926. I also assisted in making audits in the Sioux City commission rate case. The Blue Audits in this case cover the calendar year for 1929. Each market agency at the Kansas City market was given a number before we undertook to assign an accountant to that firm. The work papers will disclose the name of the firm. The Blue Audit does not disclose the name.

Exhibit A of the blue audit of firm No. 54 is the balance sheet at the beginning of the period. It is hardly representative from the standpoint that it contains only current assets and current liabilities. The first item in "Cash in Bank." This is taken from the ledger, in some cases, the cash book. That would vary with the amount which was on hand at the bank on the particular day. It is possible that the bank books would show a different amount on account of outstanding check. It represents the balance in the bank account at the time the trial balance was taken [fol. 507] off the record. The second item under Current Assets is "Proceeds Receivable." That is proceeds receivable from the sale of livestock consigned to the firm. It may represent uncollected balances from livestock sold. This represents bills outstanding at the time trial balance was taken off. The third item is "Accounts Receivable, Trade." This pertains to any items relating to the business at the market. It was not intended to include under this item any proceeds in the first instance. It might include collection of freight or claims or feed. I happen to have before me the audit of firm No. 35 whose balance sheet seems to cover most of the divisions in which we classified their accounts. I will proceed with my explanation by referring to the audit of firm No. 35.

The assets are divided into four divisions, current, investments, deferred and fixed assets. This firm conducts a cattle loan business. The item of bills receivable indicates that amount of outstanding loans. Directly under this item there is an item of "less discounted." This indicates that the firm has discounted the majority of its notes through the bank. Under "Accounts Receivable" we

have two other subdivisions, "officers and employees." This indicates that officers and employees owe the agency a small sum of money. That may be for advances of salary. The next subdivision is "other" which may have nothing to do with the operation of the market agency. To the best of our ability we could not ascribe it directly to the operation of the market agency. The next subdivision is "investments". In this particular case the investment is in a branch office. It might be cash, open accounts or fixed assets. We did not attempt to analyze the business of the branch office. We might find some other firms who have investments in stocks or real estate.

[fol. 508] Whereupon the witness produced a copy of the instructions to auditors which was marked for identification as Government Exhibit 14-A. A copy of these instructions was given to a committee representing respondents on April 16, 1930. The committee took exception to our classification of travel as outlined in the instructions. We agreed, in part, to a change in that division. This copy shows that I left under the division of travel, appraisal trips, soliciting and meetings of growers and feeders. The question was also raised at this meeting with regard to the analysis of account sales. We had selected a week in each month of the year for the basis of determining the number of drafts, the number of owners and the number of account sales. We substituted the week of January 21 for the week of January 14. We saw a possibility of saving the respondents the trouble of making these individual audits themselves so we submitted to them the instructions as a practical way of taking off the data from the various firms' books. We could not submit one firm's audit to the secretary of the Exchange or anybody else without orders from the firm whose audit we had made. Originally we submitted two copies of each audit to the firms. Later when the Exchange had someone to look over the audits we delivered one copy to the member firm and one copy to the representative of the Exchange. Whereupon Government Exhibit 14-A was received in evidence.

The next subdivision under assets is "Accrued and Deferred." The first item is postage which would take care of [fol. 509] any inventory of postage. It might be stamped envelopes, postcards or postage stamps. Office Supplies and Stationery would be an inventory of envelopes, paper,

stationery and forms. The next item is "Supplies" which takes in whips, forks and shovels. The next deferred asset is "Advertising Supplies." This might consist of circular letterheads or cards. The next item is "Interest" and would be where the firm had accrued interest.

Under the next subdivision of assets we find "Furniture and Fixtures." This represents the necessary desks and furniture, safes, accounting machines, furniture and fixtures set up on the books. We took the figures as they were stated on the books. If the account was so kept in the record as to provide for a reserve account for the individual items of furniture and fixtures, we set that up separate. If depreciation had been credited back to the asset account, we made no effort to go back and determine the amount of the depreciation that had been charged off in prior years. A little further in these instructions to auditors we provided that they set up the depreciation for 1929. If we find it necessary to charge off depreciation for 1929, we try to do that on a just basis. If no depreciation was charged off in 1929 we charge it off on the basis of figures that the books represented as being the furniture and fixtures account. We did not question the amount of depreciation charged off by a firm where it had charged it off.

The next subdivision is "Automobiles" and the next one [fol. 510] is "Horses." These were handled the same as furniture and fixtures. The next item is "Memberships." Where memberships were set up on the books we took them at the book value, not questioning the cash or market value. We tried to get the number of memberships regardless of whether they were shown on the books. The next division of the balance sheet covers "liabilities" and that is divided into four subdivisions; current liabilities, accrued and deferred liabilities, reserves and net worth. The auditor could adopt the form of net worth which was applicable to the firm he was assigned to, depending upon whether it was a corporation, partnership or a single proprietorship. The first item is "Bank Overdraft" which represents the book balance reflected by the firm. It does not necessarily mean that the firm had an actual bank overdraft. There might have been sufficient money in the bank to meet the obligations and yet the firm may have had outstanding at the time checks or drafts which would be in the nature of transit items.

The next item is "Notes Payable." This was divided into three subdivisions. The first is "Notes Payable, Trade" which could be anything pertaining to the market agency or resulting from the operation of the business. The second one is "Officers and Employees." We had to depend on the firm to classify these notes in all cases. We depended a lot on the firm's explanation of the various accounts. The next item is "Other."

[fol. 511] Accounts Payable or open accounts were subdivided the same as Notes Payable. Deferred Liabilities consist of interest and other items. The next item is "Reserves." We seldom find reserves. We had a reserve for insurance or employee liability in one or two instances. The next item is "Net Worth." There is a classification applicable to corporations which covers capital stock and surplus. The next classification covers the net worth for a partnership and is labeled "partners capital, undivided profits." The partners capital is the figure taken entirely from the books. It is what the partners have set up as their investment in the business. The next net worth item covers a single proprietorship and provides for owner's capital. We have provided here only one classification covering the balance sheet which is applicable to both the opening and closing balance sheet of both Exhibit A and B of the blue audit.

The next division of the instructions is the profit and loss statement. It is divided into two subdivisions, income and expense. We have divided the commissions into selling commissions, buying commissions, selling service or split commissions, and commissions for the clearance of traders. In the case of all the larger firms they separated their selling and buying business. The small firms accumulated their commissions and we analyzed that account to determine the amount of buying commissions and the amount of selling commissions. The split commission applies to the case [fol. 512] where a firm receives sheep but has no salesman and delivers the sheep to a firm which specializes in sheep. The commission is divided between them. The income from selling seconds is included under the commissions for selling. There is another item under income for trading profit and loss. In the blue audit there is a further subdivision of income showing income from country commissions. There is another source of income in cases where one firm rents office facilities from another firm. Under expenses we find

salaries divided as between owners and non-owners. In most cases the owner has set up in his expenses an amount which was labeled as salary. In the case of individuals they naturally operate for profit and their salary determined by that profit. If it were a partnership and they had not previously set up a salary in their expenses, we set up their earnings as salary, if there were earnings. We accepted the amount that was charged off as the salary. I think there were firms who had not provided for salary but took the division of profits. The salary in such cases was determined with the assistance of members of the firm. They would naturally have to state the proportion of the salary or the proportion of the earnings that was due to each member of the firm. There were instances where the net profit was divided and set up as salary after a consultation with members. Where there was an individual we considered the result of his operation was his salary. In all cases non owners salaries were taken from the record of the firm or the company we were auditing and the [fol. 513] title of the individual was obtained by consultation with members of the firm.

The next division is "commissions paid." Commissions paid in selling service would be commissions paid to a salesman as compensation in lieu of salary. Commissions paid for soliciting would be in the instance of an employed solicitor, paid on a percentage of the business developed. I do not recall a single instance at the Kansas City market of a solicitor being paid on a commission basis. The next division of expense is "advertising". We have provided for market papers, newspaper advertising, circulars, postage, specialities and novelties, signboards, and bus and car placards. In most cases the advertising account was carried — one account. We endeavor to analyze the account to determine the amount expended for these various subdivisions. Unless there was sufficient information in the ledger or the journal, we would have to run these items back to the bill or the check or some other paper. In most cases there was sufficient information in the ledger or in the cash journal to provide for this analysis. The next division of expense covers "traveling," which is broken into three divisions—appraisal, soliciting, and meetings. The appraisal division was to take care of any expense in connection with the employees' trips to the country for the purpose of appraising livestock. The soliciting was to

cover the expense of travel necessary in soliciting business [fol. 514] or getting new business. The meetings division was to cover the expense of trips to feeder convention and various other conventions held throughout the territory adjacent to their market. I do not believe that there was a single firm on the market that had a travel account that could be classified into these three subdivisions. We had to depend on the firm. In some cases the firms even found some difficulty in segregating it into these three divisions.

The next item is "entertaining," which might cover meals, theaters, or anything in the nature of entertainment. With the assistance of the firms we were able to determine in some cases an amount which they thought was properly classified as an entertainment expense. The next item is "automobile expense". It was found that the automobile was used for so many other purposes in the conduct of the business that it was practically impossible to make any effort to break that expense and not having kept records in the past covering the use of the automobile in the three divisions under the travel account, we just threw all of the automobile expense under one classification. The next item under expense is "automobile depreciation." If the depreciation was set up on the books we accepted that, if it was not an exorbitant charge; otherwise, the auditor was instructed to provide proper depreciation for the year 1929. The next item is "general office expense." Such items include the upkeep of machines and typewriters, and the periodical cleaning of these machines. The next item is "rent, [fol. 515] light, and heat." The firms on this market rent from the yard company. If I am not mistaken the rental charge includes the light and heat. It was all contained in one account. The next item is "postage, general and mail service." It was our idea to cover the miscellaneous postage for mailing out checks and account sales and letters regarding the business of the day, and to separate that from the postage as formerly referred to under "advertising." A good many firms in compiling their advertising account charged postage applicable to that account directly to it. Others maintain only one postage account, and we segregated that under this classification. If it were at all possible, or the firms were willing to make a separation of the postage, we accepted their break of that account, if it was not already indicated on the books.

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The next item is "insurance on furniture and fixtures." If there was any insurance on furniture and fixtures, we set it up in this division. The item of "office repairs" covers the repairs to furniture or equipment of the office. The item of "stationery, printing, and office supplies, naturally covers anything of the nature as indicated. There is a provision for depreciation of furniture and fixtures, and if it had not been taken care of in the set up of the firm's books, the auditor was instructed to make the proper adjustment. The same procedure was followed in the allowance for depreciation on horses. The item "yard supplies" includes whips, canes, and similar items necessary in yard [fol. 516] operations. Under "yard expense" are included such items as a separate yard "phone, water service, towel, service, or anything of that kind. The item of "horse and saddle" covers any expense in connection with an owned horse or a rented horse that might be used by the market agency. That would be board or feed, or it might be the rental of a horse. There is an item of "errors, adjustments, and refunds." Minor clerical errors are bound to occur in the operation of a business that requires the speed that is found necessary in this business. This account also takes care of any overpayment or mix up in which the loss is borned by the market agency. The next item is "meals," which covers meals to employees where they have been detained at the office at odd hours for the benefit of the firm. The item of "legal and auditing" covers the employment of legal and auditing services in connection with the operation of the particular business. The items of "charity and donations" "taxes on personal property," and "telephone and telegraph" are self explanatory.

The next item is "insurance." It covers the field of the employee, theft, or liability in connection with the livestock. We have not made any separation between the two forms of insurance. The idea was to set up all insurance other than insurance on furniture and fixtures under this one heading. The work papers will show the nature of the [fol. 517] insurance that is included under this subdivision of the expense. The item of "bonds" covers the premium on bonds of any nature given by the market agencies. The item of "exchange assessments" is divided into national dues, local dues, death assessments, insurance, and bonds. We found that the assessments here are made on a per

car basis. It was rather difficult in some cases to make a very thorough analysis of the expense assessments of the individual firms. We could determine that there was a payment to the exchange, but whether it was for any particular service rendered by the exchange we could not determine that. The insurance covers a blanket policy provided by the exchange which the members secure by a flat monthly charge. That was life insurance. The item of "bonds" covers bonds given to the exchange for the fulfillment of obligations. I do not recall in the Blue Audits any individual payment to the exchange for the item of bonds.

Then we come to the item of "general expense," which covers items where no segregation is possible. Another item is "directors' fees." This is a normal expense where the organization is of a form that requires or provides for the conduct of the business under the supervision of directors.

The remaining two subdivisions of the profit and loss statement are "additions to income" and "deductions from income." It was our endeavor to include under additions and deductions any income or expense accruing in the current period, but not directly related to the operation of [fol. 518] the commission business. The allocation was made by the auditor assigned to the particular firm. The first item under "additions" is "interest received." It is difficult in a good many cases to determine the gross interest received. The item of "interest" shown on the books might be the result of interest received and interest paid. It might merely be a net balance in the interest account. The items of "gain on branding, vaccinating, and feed," cover any expenses in which more might be collected from the shipper for those services than was charged by the stockyards company. These items were of minor importance on this market.

The item of "outside operations" provides for any outside business that the agency might control or operate. The item of "interests" under "deductions from income" represents interest paid. The item of "bad debts" covers such matters as advances to shippers which are not collected. If the firm had charged it off, we set it up as a bad debt. The item of "bank exchange" covers the exchange on moneys handled through the bank. The next item is

"outside operations," which covers any loss occurring on outside business other than the commission business. The item of "net profit" represents the current operations of the firm, regardless of the source of income.

The next division of this audit is the analysis of net worth, and is shown as Exhibit D in the Blue Audits. This shows the balance at the beginning of the year and any changes from current operations, changes in prior years' [fol. 519] operations, changes in assets, or changes in liabilities. The first entry under this analysis is the balance sheet at the beginning of the year. Under additions to the net worth balance we find net profit, additional investment, income from previous periods, and profit on the sale and trade of capital assets. The deductions from the balance of net worth cover withdrawals, either cash or capital, losses on sale or trade of assets, losses in previous periods. Losses during the current period, and any other deductions. The next schedule in the audit is the analysis of commissions, and is designated as Schedule No. 1. There are two divisions—selling and buying. This analysis is self explanatory.

The next schedule, which is Schedule No. 2, is a classification of salaries. The salaries are divided as between owners and non-owners. This page is self-explanatory. If the time devoted to the business by each individual was indicated on the books and records, we accepted that. If it was not indicated, we secured the information from some one in charge of the office. The same applied to the nature of the duties of each individual employee. Their title was determined either from the books or from someone in charge of the firm's affairs. We had to rely almost entirely on those in charge of the business. Very few of the firms maintain a payroll journal or separate payroll account. We were only too glad to have them classified for us. The nature of the records necessitated it. Where an employee [fol. 520] is engaged on a commission basis it is classified as commissions paid.

Schedule No. 3 shows the livestock sold and the livestock bought, classified as to species and mode of handling. Under the cars column, there is provision for single deck and double deck, and the total number of head received. I think this schedule is self-explanatory. The volume figures were secured from the account sales in so far as the selling was

concerned, and the account purchases for the buying division.

I checked the results shown on the working papers into the pencil copy which was the basis for the Blue Audits. (Witness gives the numbers of the firms audited by each of the auditors.) A copy of each audit was furnished each firm immediately after completion and final check. They were delivered in April, May, June, and possibly one or two in July of 1930. When we received the order of inquiry I listed the firms and gave them numbers. Some numbers are omitted in the audits because the firms had gone out of business or were not operating in 1929.

Whereupon, Government Exhibits Nos. 14-1 to 14-86, the same being the Blue Audits heretofore described by the witness, were received in evidence.

(It was agreed that the work papers supporting the Blue Audits would not be introduced into the record, but would be available to either the Government or respondents for [fol. 521] the purpose of tabulating any information therefrom deemded pertinent by either party, such information to be presented to the other party 15 days in advance of its introduction into the record, either in the proceeding before the Secretary or before the courts.)

Cross-examination:

My first information in regard to these instructions was through Mr. Bachmann. Just what association the Secretary had with them I do not know. I had some suggestions in regard to them. I am not in a position to say whether they are standard or not. In preparing the instructions ahead of the audits we have included some classifications that were not used on the market. It is the combined result of the experience of the Packers and Stockyards Division. The main purpose of the audit, as I understood, was not to determine the financial standing or status of any particular market agency, but to give attention to the matter of income and expense and its complete analysis. It was my understanding that this order of inquiry was for the purpose of an investigation of rates. It was my understanding that we were to secure data that would permit of an analysis of the income and expense according to the mode of receipt and the species involved in the different modes of receipts, or the modes of purchasing. It was my idea that I was to

supervise the breaking down of the income and expense in a manner that would be elastic enough to apply to some application in rate making. We were constantly in touch [fol. 522] with the schedule as it was effective in 1929. The income which was somewhat classified according to the tariff then on file naturally falls into divisions in making the analysis. We tried to classify the expense in a manner broad enough to apply it directly to any income source. A major expense which could be classified directly to the income source was salaries. It was my understanding that the instructions to auditors were broad enough in their scope to analyze the various balance sheet accounts and income and expense accounts, so that they could be applied in determining the amount of the rate charges. With the information in the books and the cooperation of the firms, I thought we were getting a very good analysis of their affairs.

The books and records of accounts of the several market agencies are not kept on a uniform basis. The Secretary has not prescribed a standardized method of accounting. I did not find among the accounting records any records showing the distribution of the workers' time as between the different functions of the work. There is not a firm on this market which keeps a time record of the operations of their employees. We have in some instances found an expenditure which could be properly assigned to some particular income source, but not in all instances. In the matter of income and expense we took first the book record. We thoroughly broke down all manner of income, checking it back to the papers of original entry which were the account sales or account purchases. If the firms had made any attempt to classify expenses we did not think it [fol. 523] necessary to check the papers of original entry into that. The firms did not accrue expense to any great degree in the preparation of their various accounting periods. To the best of my knowledge the books are kept on a matured basis. The expenses are of such a nature that it is not necessary to carry an accrual of expense or accrual of income. It is a business with a quick turnover and there is no necessity for inventories of any great proportion. The only contingent liability to my knowledge would be the notes receivable discounted. We did not make any search for unbooked assets. If it came to our attention that

they had furniture, fixtures, horses or automobiles employed in the conduct of their business and they had not provided for that in the balance sheet, we tried to make reference to them in the work papers.

As I understand the organization of John Clay and Company, the office here is operated as a branch from the parent organization. There are no owners employed directly in the operation or conduct of this branch office. We made no effort to apportion income among the owners who were not engaged in the conduct of the business. It was my understanding of the instructions that we were to apportion the net income, if any, where the owners had devoted their time to the business. If it were not indicated by the books of record and the firm called our attention to the fact that there was an agreement or some provision for the division [fol. 524] of profits we took that into consideration. My general knowledge is that John Clay controls various branches in the commission business, but he maintains and operates in Chicago an office for the purpose of loans in the livestock business. I have no personal knoweldge about the type of the organization of John Clay and Company and as to what the partners of that organization did in the livestock commission business. I do not know whether the partners in that firm hold active memberships in the Exchange.

I do not know of a firm in which all of the owners did not, or whether they do hold memberships in the Kansas City Livestock Exchange. If there happened to be an owner in one of the cooperative associations who was paid some compensation for services rendered and it was set up on the books, we set it up in the audit. I do not recall of any of their employees being producers of livestock. I do not know of any direct service to or for that organization by any of these owners that would be properly classified as salary. I think that a man engaged in business expects at least some compensation for his service and when he does not stipulate the amount he must depend on payment for his services from what he has earned out of the business. The owners have no doubt agreed with themselves, there being no other parties to the agreement, to accept as their salary what was earned in the operation of the business.

If the individual owner had a regularly monthly drawing account and set it up or wanted to consider that as a salary,

[fol. 525] we so considered it. When it came to individuals or partners who were in the business for the profits but who had not stipulated an amount or set up a value on their services, we followed the instructions and set that up as salary expense. I think there is at least one instance where there was a loss and we did not set up any salary. If that man desired that a salary be set up and would name it, we would just as soon set it up in the audit. We tried to cooperate with individuals on account of the methods of keeping books and we had to reply on them for information in regard to this anaylsis. We did not try to put a value on any man's services; we took what the books reflected. If it had been their policy to divide the profits on that basis, we tried to follow that policy. In the case of firm No. 33, the business was operated at a loss and no salary was set up. I do not know of any reason why the owner, if he so desired, could not have put a value upon his service and set it up. I think it was the purpose of all these firms to maintain a record that would provide them with the proper analysis of their operations. There might be a few exceptions, where an unprofitable business could not permit of a man setting up a salary. It would be my candid opinion that John Clay's broad experience in the business world would prompt him to keep a sufficient record in his branch office to indicate the profitableness of its operation. If there were any expenses that he did not set up in the branch office record, I would think there was an oversight. [fol. 526] We concealed nothing from the firms. It was our purpose to make everything clear to the firm or individual. We considered that they had available to them, through the members of the Exchange, a copy of these instructions, and they also had accountants who were checking our work as we turned it back to them. So far as the purpose of the future application of this, or the value of the individual's service to his organization, we made no effort to determine that.

I don't think that it would be contended that the salary the man received, whether he received nothing for his services or whether he received an exorbitant sum, was indicative of the value of his service to his organization. I was analyzing it for the purpose of the order of inquiry, which I personally understood to be to analyze the rates applicable to the service on this market. I did not stop to con-

sider the application of it. So far as dividing their time between the service performed on the various species, we tried to make that clear to them. I did not know just what application was to be made of it.

In setting up the balance sheets I did not take into consideration all the assets of liabilities of an individual, whatever they might be. I took into consideration whatever he had set up in his books or records at his office on the market. He might have owned a home and outside property and I did not investigate that. It would be my opinion that a man would maintain a record of all the values that were in [fol. 527] any way contributory to his business. The only exception was in the matter of fixed assets. I would want the books to reflect any capital or any income or expense in connection with a particular business. I should not question whether these men considered that they were properly accounting for all of the capital and the income and expense in their business. I had to rely on their books and records to provide the analysis of those things. I would have to say that the balance sheets shown in the blue audits are indicative of the actual capital pledged to this business because I assume that they accounted for all of their capital. If I were conducting a business of any kind and had capital invested in memberships or anything else, I would want it reflected on my books. Why these men do not in some cases put it on there if they own them, I cannot say. It is specified in the Packers and Stockyards Act that they shall keep true and complete records of all transactions in their business. The records are quite complete with regard to proceeds of sales and the costs of purchases and the commissions charged. I naturally would assume that they would be just as exact in recording their assets and liabilities. If I had been getting up a statement I would have tried to have on my books everything that was in any way contributory to the business. I would try to have my books reflect all the assets so that when I took off a trial balance it would give me a true picture of the capital invested.

[fol. 528] Where no item of furniture and fixtures was set up on the books, we were instructed to do that. If automobiles were set up on the books we naturally assumed that they were used entirely in the business. Where automobiles were not set up on the books, I do not recall of any in which

we set them up. Automobiles would not come to our notice, while furniture and fixtures would. We did not go off the premises to search for assets. It is natural for an accountant to suppose that everything is recorded on the books. We know that furniture and fixtures are sometimes depreciated over a period of years, and if depreciation is applied direct to an asset account it becomes wiped out. We see furniture and fixtures there and know that they are employed in the business. We might not see the automobile and we know that some firms do not employ automobiles in the conduct of the business. As far as stationery and supplies are concerned, it is the general policy of a market agency to charge that out when the purchase is made and any inventory would be of small consequence. In most cases depreciation had been determined by the firm and we found it to be in accord with instructions that were laid down to us. If they had not taken depreciation, we applied the depreciation rates according to the instructions. We did not make any effort to run down the items receivable. We relied to a great extent on the particular office manager to assist us in classifying those items. It is my recollection that there are some instances where [fol. 529] there were receivables of an extraordinary nature, doubtful of collection, that were carried into the deferred assets. We did not set up a reserve that was not provided for on the books and records. I think there was only one firm which set up a reserve for bad debts or doubtful accounts. On the final net profit and loss statement we entered only debts that were determined to be bad and charged off by the firm. It is my observation that it is not the policy of market agencies to carry reserve for bad accounts. Bad accounts occur only in a minor degree in the transaction of a straight commission business. It is my observation that the books and records of the market agencies at the Kansas City market are kept about the same as at other terminal markets. I thought those accounts reflected the necessary capital and covered the obligations of the business. I do not know of any other purpose for books than to accurately reflect the cost of the services which enter into and comprise the business. There has got to be a certain amount of judgment applied in the proper distribution of expense. The foundation of it all should

be reflected on the books. My experience has been that information gathered in the field in connection or in the operation of the business in connection with any particular expense as applied to its income source, is very unreliable and that a man's judgment is just about as good as the information gathered at the time. It would be ideal if the business could carry the burden of expense necessary to ac- [fol. 530] cumulate data in classified form, but there are very few businesses large or small that permit of the expense necessary to analyze properly all of the various sources of income and expense.

In connection with Schedule No. 2 in the blue audit, the information as to the nature of the services rendered was obtained in most cases by inquiry of the firm. Such information is generally not carried on the books. We analyze those salaries according to the individual and we made inquiry as to the nature of the services performed. We did not obtain any signed statement from the market agencies showing this segregation of the services. We submitted to them in each case two copies of this audit, so that they could take exception to any classification that we made. I had no occasion to question the accuracy of the record made in regard to this segregation, and there was no exception taken by the firms. The auditors working under me were familiar with the handling of this particular schedule and were able to place it before the firm in a general manner to get as near as possible the proper title to each employee or individual. In the case of firm No. 29, owners Nos. 2 and 3 were listed as engaging in yarding cattle. This was an error which was called to Mr. Bachmann's attention. In connection with the audit of Firm No. 29, employee No. 5 is listed as selling and buying cattle. No division of time between those duties was made. No division was made in the time spent in plural and single ownership consignments. I have made no study of the [fol. 531] matter for the purpose of making a distribution of time. If I were assigned to that I would give it an awful try. The instructions with respect to Exchange memberships are found in the last paragraph of Government Exhibit 14-A. I do not know any reason why the membership should not have been set up regardless of whether shown on the books or not. I do not know the theory on which this information was to be ultimately used. The instructions

with respect to furniture and fixtures also are contained in Government Exhibit 14-A. I interpreted the instructions to represent the book or cost value, if it had not been inflated for any reason. We did not take into consideration any appreciations in value of fixed assets. I cannot say whether the book values reveal present reproductive values. Firm No. 1 is a partnership composed of two owners, referred to on Schedule No. 2 of Exhibit 14-1 as Nos. 1 and 2.

The item of "automobiles" is omitted for the reason that it was not on the books and we did not seek the information regarding the automobile. It did not occur to me that there was an automobile necessary in the Morgan business. I do not know anything about the physical association of feeder yards, or anything of the kind. I submitted to Mr. Morgan this copy of our audit on May 27th, and this is my first information that Mr. Morgan has an automobile out there.

In the case of Firm No. 1, which is a sheep firm, it is only natural to assume that they would not have some of the [fol. 532] expenses which are incurred by a firm doing a general market agency business. This firm uses as a medium of advertising newspapers only, according to this analysis. In the case of this firm there is an item of $169 for soliciting, under the heading of "Automobile Expense." It is rather unusual that this should be allocated to soliciting. Since the item of postage is not allocated in part to advertising, it is apparent that this firm did not advertise through the medium of circulars. The item of "Salaries for Owners" was arrived at from the records of the firm. The item of "Insurance" of $242.40 represents insurance carried by the Kansas City Livestock Exchange covered by blanket policy. Both members of the firm are enjoying that insurance and we found it to be $10.10 per membership per month. I did not examine the policy to determine the beneficiary. We arrived at owners' salaries by allowing the owner under a single proprietorship the full amount of his net profit.

In the Blue Audit of Firm No. 1 there is a notation on Schedule No. 2 that owners No. 1 and No. 2 each spent one month in soliciting. This is an estimate furnished by the owners of the concern in regard to the amount of time these owners devoted to soliciting. No such notation appears on the audit of Firm No. 5. It might be that Mr. Klecker did

not want to assume the responsibility of apportioning his employees' time to the expense of soliciting.

I made no investigation as to the beneficiaries under the insurance policies. I classified the payment for insurance [fol. 533] as an expense, according to the instructions. I understood it to be an expense of the business.

The blue audit of Firm No. 59 indicates that that firm is a corporation.

There has been no reserve for depreciation set up. Depreciation on furniture and fixtures has been charged off, however, and no doubt has been charged back to the asset account. There is no depreciation set up on the automobile, the value being the same at the beginning and end of the year. The absence of the reserve would indicate that there had been a change or exchange of automobiles during the year 1929. The analysis of net worth explains the charge in the operating expenses for the depreciation on these various items. It was not credited to assets as I had previously assumed, but was credited to the net worth by the auditor. That is not exactly correct accounting. It should have been credited to the asset account or the reserve set up. The effect is practically the same. You will find that the charge for depreciation on the automobile has been carried under expenses, under the heading of "traveling expenses". Under the heading of expenses the first item is owners salaries, amounting to $25,400. Four items go to make up that amount. $7,300 is the salary of C. D. Henry, $6,000 is the salary of W. L. Byars, $4,800 is the salary of F. D. Byars, and $7,300 is the salary of J. C. Swfit. Insofar as the owners were engaged in the conduct of the business I followed the instructions in [fol. 534] regard to classification of owners. I am not in a position to say whether the titles of these several employees were designated on the books of record or whether they were secured at the time of the audit, after determining the amounts paid to each individual. The item of "Bad Debts" under the heading of "Deductions from Income," amounting to $3,198.50, covers uncollectible accounts or notes receivables. A detailed analysis of that figure is not in the work papers. We had no way of determining the collectibility of the receivables and do not know whether a larger amount should have been charged off for bad debts in that year. I think it is possible to make a segregation

between the capital used in the rediscount of notes and capital employed in the sale or purchase of livestock. I would have to give the matter some study before applying any given theory in making the segregation.

The market agencies covered by the blue audits which have no furniture and fixtures account are as follows: Firms Nos. 4, 15, 18, 20, 31, 33, 37, 41, 48, 54, 56, 61, 62, 66, 67, 72, 74 and 79. That is in part explained by the fact that several of these firms rent the furniture and fixture facilities. The following commission firms rent furniture and fixtures, according to the record: Nos. 31, 33, 37, 56, 66 and 72. Of the fourteen order buyers there is only one which has set up in its records furniture and fixtures. That is Firm No. 39. The following order buying firms have no furniture and fixtures in the blue audit: Nos. 3, 21, [fol. 535] 24, 32, 38, 40, 47, 49, 57, 58, 64, 69, and 81. Those firms which rent furniture and fixtures are Nos. 3, 40, 47, 69 and 81.

I accepted these books as being an honest and accurate portrayal of the various businesses which we were investigating. There is nothing inaccurate about the figure in itself. There might be interpretations put on to the effect of the result of that figure.

On Exhibit C of the audit of Firm No. 35 postage is carried under advertising in the amount of $1,977.74, whereas general postage appears in an item not classified under advertising, amounting to $52.26. From the work papers I take it that the firm had charged to advertising that amount. On Exhibit C of the audit of Firm No. 10 postage is classified to advertising in the sum of $1,440.41, whereas under general postage the amount is $1,378.07. It is apparent from the work papers that this firm carries two postages accounts.

In the audit of Firm No. 54 there is a segregation between advertising and postage as against general postage and general mail service. Similar segregations were made in the audit of firm No. 14 and firm No. 12. I did not attempt to check back in any given instance to go into the accuracy of this segregation which appears to be widely differentiated in relative amounts from market agency to market agency.

There are some cases in which insurance is carried to [fol. 536] protect and guarantee the firms against liability

with respect to the sale or purchase of stolen or mortgaged cattle, and there are instances in which no such insurance is carried.

I do not have anything to do with the preparation of the form of annual reports filed by market agencies. I have seen very few of those reports and have given them no study whatever. It would require considerable expense to keep complete records but it would not require much additional expense to keep adequate records. I do not know what the possibilities of collective accounting are. I can visualize savings from standardization of the accounting procedure. The human element enters into the application or the distribution of income expense to any standardized form. I have never tried out what we have discussed here as the ideal lay-out for determining rates, but my observation has been that they have determined rates from any manner of records, and it has been upheld.

The following firms have no memberships set up on their balance sheets: Nos. 4, 5, 7, 12, 13, 15, 18, 20, 23, 28, 29, 31, 33, 37, 41, 43, 44, 46, 48, 52, 53, 54, 55, 56, 60, 61, 62, 63, 65, 66, 67, 68, 70, 72, 74, 75, 76, 77, 78, 79, 80, 82, 85, 86, and Nos. 10 and 36.

The following order buying firms have no memberships: Nos. 3, 21, 24, 32, 40, 47, 49, 58, 57, and 69. The following firms have automobiles set up on their books: Nos. 12, 18, 25, [fol. 537] 26, 35, 42, 48, 51, 53, 59, 62, 67, 68, 70, 71, 73, 82, and Firms Nos. 10 and 36. All other firms have no automobiles set up on their accounts. The following firms had good will set up on their balance sheets: Nos. 12, 42, 46, and 53. In the case of cooperatives, Firms Nos. 10, and 36, nothing was brought to my attention in the way of assets equivalent in value to Exchange memberships representing deposits with the Trade Practice Committee. There is no indiciation in the blue audit of the Farmers Union or the work papers of any asset with reference to an Exchange membership, or with reference to any deposit with the Market Practice Committee.

Redirect examination:

I made no attempt whatever to allocate the costs of doing business to the various services rendered according to the divisions in the tariff of rates and charges. It would be rather unusual if everything of value that partners owned were set up in the books of the separate businesses. The

practice to run down and verify every item is not generally followed in making an audit. If the purpose of the audit were to determine any unlisted assets or liabilities, the auditor would have to make a much more definite analysis. In my opinion it would not have been practical to have conducted such a search in the audit of these market agencies who are respondents in this proceeding. The work papers were made available to the respondents immediately after they were taken off the books. In the case of Firm No. 5, [fol. 538] the auditor set up automobile depreciation on an automobile that was not carried on the books of the firm. I would interpret that to mean that this firm had at least stated that they had an automobile employed in their business and had placed some value on it for the auditor to determine this amount of depr-ciation. From the work papers it is indicated that the firm charged out $200 of depreciation to expense and did not make a provision for the asset value of the car in their records. It is the accepted practice to charge off the depreciation on assets. After the asset value has been charged off in the manner of depreciation expense, there are several courses to pursue. It is the general custom to credit depreciation direct to the asset account. This $200 item to which you refer, having been charged off, does not appear to have been credited to an asset account as you have no asset account on the balance sheet at the beginning of the year. When I included Exchange assessments and insurance in the statement of expense in Exhibit C of the audit of firm No. 5, I did not attempt to pass upon the question of whether those items were proper expenses of the commission firm for rate making purposes.

In speaking of the segregation of income and expense according to species and mode of receipt, I stated that it would require an arbitrary distribution of some of the expenses so segregated. By arbitrary I meant that a reasonable exercise of judgment would have to be exercised in the distribution of some of that expense. I do not know of anything in the making of the blue audits which would [fol. 539] lead me to believe that they are not dependable as a basis for a cost study.

Recross examination:

In speaking of improvement in making these audits, I did not mean that we had reached a state of perfection. I

endeavor to learn by experience. I do not recall that there was a commission paid to employees for their services in any case. In connection with the personal insurance premium amounting to $1,368.75, shown on the blue audit of Firm No. 59, there is nothing in the work papers to indicate the nature of the insurance or by whom it was written or to whom it might be payable. These additions and deductions from income and net worth involved the use of judgment. It was my place to review these audits after the accountant had completed his analysis.

It is evident from the work papers that the deduction should have been applied to current operations and appeared under deductions from income. There is nothing wrong with the handling of the item of income tax. The auditors kept them separate as one seems to have created a reserve for income tax in 1929 and the other is in all probability an adjustment of the income tax in 1928. I do not recall any other concern at this time which had an expenditure of an income tax nature. I do not intend to convey the idea that they did not exist. I merely state that I did not recall any item, except in this individual instance. (Witness makes an examination of his papers.) This is apparently the only firm on which there was an adjustment [fol. 540] of prior income tax account. There may have been income tax paid by other firms and that payment of income tax has been allowed or included in the analysis of expense on the profit and loss statement under the heading of taxes. I cannot without making an investigation of each firm determine the amount of income tax involved.

Redirect examination:

In connection with the item of insurance premium of $1,368.75, shown on Exhibit C of the audit of firm No. 59, the working papers indicate that this charge was made direct to the surplus account of the firm. It being a current expenditure and the instructions having been to keep the current expenditures on the profit and loss statement, I made the mistake of permitting it to be shown under deductions from net worth. That would not change the nature of the item at all or in any way effect the result. Whereupon the witness was excused.

JOHN J. BACHMANN, a witness called by the Government, after being duly sworn, testified as follows: I am chief

accountant for the Packers and Stockyards Division, Bureau of Animal Industry, United States Department of Agriculture. My general duties are the supervision and control over accountants and clerks in the accounting division, making audits for rate purposes, trade practice purposes, of stockyards, commission firms, order buyers and dealers. As to the audits for rate making purposes, they have been almost entirely within my control as to the form [fol. 541] and the data to be gathered. As to the statistics for the annual reports, the form of them had been established to a very general degree before I came to work for the Department. (Witness states his training and experience.)

I have been engaged in my present duties for two years. I supervised the preparation of audits for the stockyard rate hearings at Nashville, Tennessee; St. Joseph, Missouri; Denver, Colorado; Kansas City, Missouri; St. Louis, Missouri; and the commission rate hearing at Sioux City, Iowa. I hold the degree of Certified Public Accountant from the State of Minnesota. I prepared the original pencil outline of the entire instructions contained in Government Exhibit 14-A with the exception of the second last sheet. I gave Mr. Burns instructions to prepare that sheet as I had overlooked it. It was prepared for the purpose of serving as an outline for all audits to be made in the future for commission rate hearings. While the audit of the Sioux City commission firms was being made I received instructions to designate one of our auditors to take up the same work in Kansas City. I prepared these instructions, basing my outline on studies which I had previously made of the Omaha rate hearing and such other ideas as came to my mind as to information which might be valuable for this particular purpose. After these blue audits were made I made a cost study based upon the data obtained. I have that in the form of a report. Whereupon witness produced a copy of his report and the same was marked Government Exhibit No. 15.

[fol. 542] At the time of the completion of this report, about August 10, 1930, we submitted to accountants who were representing the various members of the Livestock Exchange our pencil copy for the purpose of making a photostat copy of it. After the report was copied at Washington, two copies were submitted to the Livestock Exchange. That was some time in September. At the same

time a copy was submitted to the Farmers Union and to the Producers. Government Exhibit No. 15 is based upon the blue audits contained in Government Exhibits No. 14 and the working papers, and possibly to a very minor degree upon such additional information which we got from the various companies which may have been missing from the work papers at the time. Pages 21 and 22 of this report are supporting schedules to pages 19, and 20. The particular columns which they support are the eliminations and additions column headed "Eliminate Income," "Eliminate Expense," and "Add Expense." These four sheets attempt to and do reconcile the net profits shown in Government Exhibit 14 with the income and cost shown in Government Exhibit 15. These adjustments were made with respect to the blue audits and the blue audit data so adjusted furnished the basis of this cost study plus the working papers. When the word cost study is used I want it distinctly understood that this is not specifically a cost study. It goes further than an actual cost study in so far that it reduces all income to a unit basis as well as the cost, and it has in addition other statistical information which is not usually [fol. 543] found in the preparation of a cost study. It is rather a statistical study for rate making purposes. Pages 19 to 21, inclusive, relate to market agencies doing a commission business as distinguished from order buyers. No such adjustments were necessary for the order buyers. These eliminations on pages 21 and 22 were only such as were clearly, in our opinion, to be made. The study shows other expenses which from a rate making viewpoint might be questioned. I have particular reference to pages 35 and 36 showing the charity and donations and general exchange payments, headed local dues. These two items have been left in the expenses for the purpose of this study. I determined these eliminations and additions shown on pages 19 to 22. We did not allocate any income. We did analyze the income into species and the mode of receipt by species. The segregation of income as to the various species and the various modes of receipt was information which was obtained from the records of the market agencies with one exception. In case of mixed cars, the account sales do not show the amount of income to be allocated to the various species. That had to be allocated to the species on the basis of the unit charge weighed by the number of head. An amount so determined was either prorated up or down in

proportion with the actual amount of income received. It was necessary to allocate expenses in order to make this statistical study. Direct and indirect allocations were used. About 60% was direct to species and about 40% was allo-
[fol. 544] cated to species on an indirect basis. The records show certain expenses which could be charged directly to some one species. I mean the records of the market agencies or such other data which we gathered in the course of preparation for this hearing. The distribution of such expenses which could not be made in this direct way is shown in this study beginning on page 37. Some of those office salaries can be placed directly against the income of one species. Office salaries are chargeable to the three species indicated, and this charge cannot be made directly. The basis which we used for distribution in the case of office salaries was the number of account sales and the number of owners. The allocation was made only to species and not to method of arrival. An account sale is made out for some one individual shipping one species, say cattle and calves. Under the heading of cattle and calves there would be put one account sale and one owner, and we may have another account sale with one species and three owners. For that one there would be put down one unit on account sales and three units for owners. Then we might have an account sale for three species coming in a mixed car belonging to one owner. The account sale, how er, would be divided and the owners would be divided on the basis of one third to species, cattle and calves, one third to hogs, and one third to sheep. There would still be only one unit for there was only one account sale and one owner for each of those. The distribution of indirect expenses is
[fol. 545] possibly the most difficult phase of a cost study. The basis for distribution should come as close to the actual work which is being done by the individuals who get the salary, or in case of expense other than salary, the basis should be related as closely to the work as possible. In case of office salaries, the main duties performed by office men are the preparation of account sales and payment of checks. We try to establish a ratio between the three species on the basis of the amount of work which those individuals have done, and after we have determined such a basis we distribute the expense on that ratio. We tried to find out from the various firms the percentage of time which certain employees gave to the loan business, and for the pur-

pose of this study that was eliminated. We tried to get the amount of office salaries and stationery used in the load business and wherever we could determine that such expenses were eliminated. We tried to get the amount of expense applicable to country business and we found that was impossible. We left both the income and expense in in connection with country business and took into consideration also the number of head in these transactions and reduced the expenses on the basis of not only the head which actually went through the yards, but also the head that were handled out in the country. The indirect allocation of expenses is sometimes referred to as an arbitrary allocation. The distribution is not arbitrary in the general accepted sense of that word. The distribution is made on [fol. 546] the basis of judgment.

The next two sheets, 39 and 40, take up yarding salaries. The indirect yarding salaries were distributed on the basis of drafts. The account sales were analyzed to show the number of drafts by species and this information was accumulated for each concern separately. The ratio of drafts applicable to the various species was determined, and such expenses which could not be allocated to species directly were allocated on the basis of this ratio. It is my impression that the majority of the time of a yardman is taken up with sorting and weighing, and this is done on the basis of a very large degree of drafts. I do not think that there are any salesmen's salaries distributed on the basis of yarding. If the Blue Audits showed that the salesman's time was spent in yarding, that division was made for this particular expense.

The next item is soliciting and split salaries. The indirect salaries there were distributed on the basis of commission income. The commission income was analyzed by species and such salaries as could not be allocated to species directly were allocated on the basis of the analyzed commissions. The majority of these concerns have their sheep handled by a company which handles a large volume of sheep, and the commission is split. The heading "split salaries" covers split commissions.

Business getting and maintaining expense is shown on pages 43 and 44. The indirect expenses under that heading [fol. 547] are distributed on the basis of commission income. In the case of one firm the expense was allocated directly.

The next distribution is of office expense, which was distributed on the same basis as the salary for officers was distributed. Yarding expenses, shown on pages 47 and 48, were distributed on the basis of drafts. Administrative and general expenses, shown on pages 49 and 50, were distributed on the basis of commission income, and this distribution was made for each particular firm. In making this Government Exhibit 15 it was necessary to employ carlot equivalents. These carlot equivalents were obtained on the basis of the number of head in a straight car. As to the mixed cars, segregation was made as between cattle and calves on the basis of actual cars. The same application was made for mixed cars other than cattle and calves. The actual number of cars was taken and was divided as to species. These equivalents were calculated for each firm separately.

The determination of interest on working capital is shown on pages 109 and 110 of Government Exhibit 15. The working capital at the beginning and end of the year designates the beginning of the period and the end of the period under consideration. The amount of working capital covers approximately the value of furniture and fixtures, that is, the estimated value where the book value is not shown of the furniture and fixtures, automobiles, horses, and deferred items, plus approximately one month's allowance of ex-
[fol. 548] penses. That is, it allows for one twelfth of the annual expenses. The beginning and the ending amounts are then averaged and the interest of the averaged balance is computed at 8 per cent. The total number of cars of all species is divided into that interest to determine the per car amount. I did not pass any judgment on the rate of interest. Before I left Washington I asked Dr. Dozier about it and he suggested that I use 8 per cent.

Pages 111 to 114 give the bases for distribution of expenses. The next six pages show the volume of work handled by one man. This is the average on an annual basis for each firm. It may be that one individual in the firm handles a greater proportion of the business than another individual. If some of the men were working for less than a year, their time would be shown in the decimal figure.

There is one correction to be made on page 115, in the case of Firm No. 29. Two men should have been classed as salesmen rather than yardmen. That would change the number to three rather than to one salesman.

Pages 121 to 127 show a comparison of the salaries between owners and non owners, for salesmen and buyers, and also for office men. This table starts with the highest salaries and proceeds to the lowest salaries. Each separate item there is a separate individual. The second column is the salary on an annual basis. If one individual worked for only part of the year, his salary was reduced to an [fol. 549] annual basis. If a salesman spent part of the time in the office doing office work, there would be no adjustment in his salary made on that account.

The second part of this cost study is applicable to the order buyers, and is made on the same principles as the first part of it. The division comes between pages 127 and 128. (Whereupon Government Exhibit No. 15 was offered in evidence and ruling reserved until after cross examination.)

Government Exhibits Nos. 16 and 16-A

Government Exhibit No. 16, the same being a compilation of the receipts of livestock at the Kansas City Stockyards by days, weeks, and months for the year 1929, and January to June, inclusive, for the year 1930; and Government Exhibit No. 16-A, the same being a compilation showing the total direct hogs coming through the Kansas City market, the number of hogs going to the Mistletoe yards, total hogs going to packers outside of the yards, were received in evidence.

Government Exhibits Nos. 17 and 17-A

Government Exhibits Nos. 17 and 17-A, the same being a compilation showing the purchases of cattle, calves, hogs, and sheep by packers and butchers for the year 1929, and the first six months of 1930, were received in evidence.

Government Exhibit No. 18

Government Exhibit No. 18, the same being a compila- [fol. 550] tion showing the livestock held over in the Kansas City Stockyards by days, weeks and months for the year 1929 and the first six months of 1930, was received in evidence.

Government Exhibit No. 19

Government Exhibit No. 19, the same being a compilation showing the disposition of livestock received at the Kansas City Stockyards, was received in evidence.

Government Exhibits 20-A, B. & C.

Government Exhibits Nos. 20-A, B. & C, consisting of three pages, the same being compilations showing the number of cattle and calves, hogs, and sheep, respectively, weighed at the Kansas City Stockyards during the year 1929, were received in evidence.

Government Exhibit No. 21

Government Exhibit No. 21, the same being a compilation showing the animals slaughtered under Federal meat inspection at Kansas City, Missouri, for the years 1919 to 1929, inclusive, was received in evidence.

Cross-examination:

I have been chief accountant of the Packers and Stockyards Division since I went with the Department on January 7, 1929. I would say that the average number of accountants under my direction varies between 15 and 20. There are also from five to ten clerks. My superior is not an accountant, but my recommendations may be overruled. I am of the opinion that slight changes have been [fol. 551] made in the form of annual report for market agencies within the last two years. (Whereupon counsel hands witness a copy of Form PS-3). This is the form used in 1929. I do not recall whether or not the form is the same for 1928. (Witness was requested to produce copies of the annual report forms commencing with the year 1925 down to date). The term "total gross value" used under Item 6 on Page 2 of this Form refers to the total selling price without deductions and the total purchase price without deductions. The form does not contain any definitions of what is comprehended by gross value. I have never made any investigation to determine whether the same interpretation has been placed upon it by the market agencies. I have looked over the tariff of the market agencies and have studied it, possibly not as thoroughly as I should

have. This study began about April 20, when our auditors first came to Kansas City. The form of annual report required of market agencies at Kansas City is the same required of market agencies at other markets. This form does not have a classification of income and expenses from the standpoint of the nature and character of the services rendered in respect to species, mode of arrival, ownership, and extra services. I do not know of any annual report form of such a character being issued by the Bureau for the year 1929, or any other year. I have checked over not less than 500 of these reports myself and found in quite a number of cases where apparently there were [fol. 552] deficiencies in the records. I could not say whether that applies to this market. We have been able to get satisfactory information, at least it was satisfactory for the time being, although we have attempted from year to year to make improvements in the information that is communicated to us through these reports. In my judgment these reports do not reveal the essential information needed in a determination of the reasonableness or unreasonableness of the rates and charges contained in the tariffs, filed by the respective market agencies. As I understand it, the report was not drawn up for that purpose. I have made no report to any superior office predicated upon these annual reports for the year 1929, or any other year to the effect that returns to the market agencies appeared to be excessive and unreasonable. There was no audit or verification made to check these reports. However, they are gone over in Washington in complete detail and if there is anything which is missing, letters are sent out. I know of no instructions issued with respect to the manner in which books, accounts, and records, should be kept. I am generally familiar with tariffs filed by market agencies at other stockyards. I have made no audit for rate making purposes at eastern markets, such as Baltimore, Lancaster, Jersey City, and Buffalo. I have not familiarized myself with the yield of the schedules of rates and charges at those markets compared with the gross value of sales and purchases. I have no knowledge of any previous proceedings in the nature of an inquiry into the [fol. 553] rates and charges of the market agencies at the Kansas City market. I did not know that there had been any cut in rates under some previous agreement. I do not

know the extent of such reduction. I would not have regarded that as a proper subject of inquiry in endeavoring to determine the facts bearing upon the reasonableness or unreasonableness of the existing rates and charges. Prior to my connection with the Department of Agriculture I never had any experience in a hearing in connection with rate making, except possibly a hearing on the question of the securities of a public utility. However, during the two and one half years which I spent with the City of St. Paul as accountant, all matters of accountancy came across my desk, that applied to rates of all classes of public utilities, street car companies, light companies, gas companies, and so forth. In my public accounting practice I have worked with an individual who specialized in rate making, but I never took charge of one of those cases myself. I stated that in 1922 I made the first statistical cost study ever undertaken. I stated that for the reason that the officers of the Northwestern Electric Equipment Company of St. Paul informed me that the Harvard School of Research and Business had prepared a pamphlet making the assertion that it was the first attempt at making a study by units of distribution cost. I would regard the undertaking which I have engaged in here as being more in the nature of distribution than in the nature of manufacturing. [fol. 554] I find no difficulty in making a study of this kind, after having gone through that study made in 1922, which is more complicated, more detailed, and in greater volume. It is more or less mechanical after you have gained experience and have the basic data. By basic data I mean the number of units and the basis for distribution of indirect costs. There are always matters coming up which require judgment, but the procedure, if you have the information, is nothing but a mechanical process of putting a report of this kind together. I know of no way, from a purely cost accounting viewpoint, of making a report which will differentiate all services to conform to the tariff as far as cost of rendering those various services are concerned. We gave that some study and I know of no way right now in which it could be done, from a purely cost accounting viewpoint, without time studies, or a study to develop a ratio for the division of an individual's time

between livestock coming in in different ways. In my present position I have made no cost study as applied to that portion of the distribution costs incident to the marketing of livestock represented by packing cost or the spread between live cost to the packer and the wholesale price of the products as sold by the packers. I have made no study of the retail costs in respect to the handling of meat products. I could not obtain from the records of our particular Bureau data showing the proportion of the dollar paid by the consumer for meat products which goes to the retail packer, market agency, stockyards company, transporta-
[fol. 555] tion company, and producer, respectively. I have made no investigation to determine whether the records of the Bureau of Agricultural Economics contain that information. I have no information as to the change in the proportion of the dollar going to each of these agencies during the period between 1913 and 1929. The reasonable cost of rendering the various services must be met by the income which will be produced. My conception of the characteristics of a cost which should be considered in connection with proper rates of compensation for such services is that of all costs which have to do with the commission business as such. That includes all costs that I could find without spending more time at it, or getting at it, than would be offset by the value of the information which we could gather. My judgment for the time being was final as to how this study was to be made. I set up in the cost study various functions, and brought into those functions the cost which I thought should be brought under them, and on that basis made a unit study. That cost study does not attempt to conform itself with the tariff and is not so drawn up that the cost of any particular services included under the tariff can be identified with that item in the tariff; I mean, accurately to the nth degree. My investigation took the species as a whole, whether selling or buying. I did not attempt to segregate those costs and relate them to the separately rated functions of selling and buying, or to selling single-ownership carlots as distinguished from
[fol. 556] plural ownership carlots, or selling mixed carlots as distinguished from straight carlots. In the first place we felt that it could not be done without making a time study of some kind or other, or establishing ratios of difficulty. In the second place, we felt that — individual thor-

oughly familiar with the livestock commission business should bring in such other evidence as would tend to show the relative difficulty of handling a straight car in comparison to mixed cars, or of handling single ownerships in comparison with plural ownerships. We tried to make as complete a cost study as was possible with a reasonable expenditure of money and time. I felt that facts bearing upon the reasonableness or the unreasonableness of the specific charges for differentiated services could be brought out by other testimony. A rate might be profitable or unprofitable, depending upon the level of the rate itself. I feel that a company ought to handle a reasonable volume of business, and that volume should be handled with a reasonable cost, and that the tariff shall be sufficiently high to return that reasonable cost, plus a reasonable return on the necessary capital for the conduct of the commission business. The rate has something to do with the margin of profit. I had very little personal knowledge of the conduct of yard operations by market agencies involved in this hearing when I formulated these instructions. I had very little knowledge of the office operations. I had never personally examined the books and records of any other [fol. 557] market agency respondents at Kansas City. I felt there was not very much difference in the methods and conditions under which the business was operated from those at other markets. The instructions were formulated upon the basis of my study of the Omaha Rate Case, and the information which was gotten by auditors in preparation for that hearing. No consideration was given at all to Form Ps-3. The reason I set up a separate cost statement for each firm in Exhibit No. 15 was that I felt that averages do not mean anything in a rate hearing of this kind, and that a study was to be made of each firm separately from which the Secretary could determine what is reasonable and fair for the various concerns. The service that each firm renders is, as far as I can see, identical. The fact that it costs one firm more to render a service than it does another does not indicate at all that if a separate tariff is made up for each one of them that any one of those tariffs is reasonable. I think efficiency is its own reward. I do not know whether all market agencies at Kansas City charge the same rates for selling livestock. I do know that the commissions for buying

livestock are different. It is my understanding that the selling rates are similar.

Averages may at some times have crept in. In these unit costs it is only the total of a column and was used for the purpose of reconciliation of all the firms in groups against the consolidated control sheet which we had established. [fol. 558] The unit cost for the various species begins on page 9 for cattle and calves. Sheets 11 and 12 have the unit costs for hogs. The average was shown for hogs but not for cattle and sheep. It was an oversight that the average was left in there. I could not give the unit cost of selling or buying since the overheads have not been allocated to either of those functions. A study was not made of the difference in the cost as between rail arrivals and livestock arriving by truck. We determined the composite cost per unit of livestock without distinguishing whether or not that unit of livestock came in by rail straight, by rail mixed, truck in, or whether it was buying straight or buying for truck out. I feel that there are differences in the cost incident to the rendition of service with respect to the different modes of arrival. This cost study does not reveal those differences.

These differences vary with the differences in volume. The cost study will not indicate whether it costs more to buy a carlot of cattle or carlot which is mixed as to species. The cost study which we have made does show whether or not all the tariff charges for one species are too high or too low for that particular species. It also can be used as a basis from which variations can be made for the establishment of a tariff, the variations being based on other testimony by individuals who are thoroughly familiar with this business.

A segregation was made between owners and non-owners [fol. 559] salaries for the purpose of determining the comparison between bargain salaries and non-bargain salaries. An owner is one who has a voice in the control of the business. I made no difference because of the organization. I appreciate that the degree of control which is exercised under various forms of business organization is different but there is only one kind of control, and that is the right of the management of the company. As to their right to withdraw income by way of salary that would be varied with the degree of control which the various individuals

have. The cost study is affected by the amount which they withdraw, either as salaries or as withdrawals. We designate the withdrawals as salaries. We had in mind that for owners the Secretary would have to determine what a reasonable salary is, and that the owners' salaries which we have in here would automatically be eliminated and there would be substituted for such salary the reasonable salary determined by the Secretary. This is a tentative study and is based upon the best information which we could get. Salary is the amount of compensation for services bargained for between one individual and another individual, or one individual and a group of individuals, or the group being represented by an agent. I feel that if the salesman who is a non-owner has no risk and no voice in the management that the owner's salary for the identical things which that non owner does should be the same and that the question of risk and management are separate [fol. 560] matters to be considered. The actual amount spent for management and the actual risk which has been reduced to actualities for the year 1929 are contained in these studies. I have eliminated bad debts from the operating cost as much as possible, having in mind that any bad debts resulting from a loan business should not be considered for the commission business. Also I was given to understand during my work here that this was strictly a cash business and that if any individual had held out on purchases or sales on credit, that was a risk which they took which should not be saddled upon the general shipper. I have in mind one concern which did quite a volume of business and which had no interest received or interest paid on its books. As to whether or not it is essential to extend credit, I do not know. I feel that if credit is extended to an individual, that individual should pay for whatever credit he gets by way of exchange or interest. As I recall it, some firms did charge to an individual exchange and collect it, if he does not complain about it, and they do not charge it to an individual who complains about it. I do believe that most companies do accept checks. I do not know of anything that compels the recipient of the service, particularly the buying service rendered by an agency, to buy at the market as distinguished from buying it direct from the owner of the livestock in the country. I understand that the buyer or seller can go any place

they want to. With reference to a regulated company which [fol. 561] can stop the service in comparison to a regulated company which may not have the power to stop the service, I would say that even though it is competitive, where apparent discrepancies exist, they should be eliminated. I do not see why they should have the right to concede to one individual, or to one group of individuals, advantages to the detriment of another individual, even though they are in the competitive field. In a field that is competitive in every possible and conceivable direction a greater regard for the convenience of all patrons collectively must be shown than is necessary in the case of the provider of the service monopolistic in character. I have found in previous rate hearings competition between one firm and another firm to get business away from each other which tends to make the cost of business getting and maintaining higher than it would be if the competition were not there. From my own experience I cannot give any illustrations of where competitive influences have affected in varying degrees rates subject to the control of a rate making body.

If the memberships in the Livestock Exchange were set up on the books, I felt that the accountant should leave them that way, and if they were not set up I felt that they should leave it that way. I wanted them to get the number of memberships so that if later on it was felt necessary to include this information in working capital at least that much information would be on hand, plus information as to the apparently market value which was to be [fol. 562] gotten from other sources. I excluded memberships, whether booked or unbooked, from consideration in my analysis of working capital. The return on that does not enter into the cost and I felt that the return on the Exchange memberships should not be allowed for rate making purposes.

The working capital is not included in the cost. It is shown as a separate statement. I believe that is in line with good cost accounting principles, that the return on investment is not a part of cost but is a part of the total return which a company should get. I have here a paper which is a part of the Government Exhibit 16-A. It is the analysis of the direct cost for the year 1929, analyzed by months. I suggest that the analysis go in as Government Exhibit 16-B.

(Whereupon, Government Exhibit No. 16-B was received in evidence.)

In commercial practice, costs would go in whether they were reasonable or not. In regulation, the reasonableness of the cost would be questioned.

I did not consider the risk factor in this cost study. The unusual risks do not enter into the unit costs. Bad debts have been eliminated from this study.

The total for all the concerns for 1929 as to bad debts is $6,930.92.

We took the last current year of operations and the individual who finally determines what is fair and reasonable [fol. 563] must determine whether the year 1929 is a fairly representative year in all respects. I had the volume records of the stockyards company for a number of years past. I gathered certain information which would enable someone to determine whether it was a fairly representative year. That information is not in the statistical cost study. I found that the fluctuation of expenses as between months, even with a heavy volume in one month in comparison with another, was not very great, and I feel that the inference can be drawn that it would not be very great as between years. Relative increases in volume effect unit costs, but total costs not so much. The cost study reduces the various factors of cost to a unit basis, and it also shows all the costs incurred by the various concerns.

On Firm No. 4 the per car income from cattle and calves was $17.88 and the cost of $14.03; hogs, income $17.12, cost $18.65; sheep income $17.57, cost $21.92 per car. These figures appear on pages 1, 3 and 5 of Exhibit 15. The inclusion of net profit or total return to owners as salaries in the cost statement was not done in the case of this particular concern. Some time after this cost study was made and before the hearing began, my attention was directed to that error and I had a distribution of the net profit made from the data which we had. The amount so distributed was $1,369.03 to Mr. Burrus, $1,528.30 to Mr. Raglan, and $1,161.65 to Mr. Storts. I do not know whether it was reasonable compensation for their services or not. That amount is not included in the schedule of salaries. I would agree that the cost should comprehend in a fair amount the sacrifice which they made to provide service to their

[fol. 564] patrons. I would not attempt to determine what the allowance should be.

I did not attempt to determine a reasonable allowance to be made by way of salary to any officer or owner. In so far as owners' salaries are concerned, there would have to be substituted therefore a fair allowance for the services which owners render which are comparable to non owners, and in addition thereto there should be allowed an amount for management and for risk. In my opinion the salaries set up should in amount be comparable from a strictly service viewpoint with the bargained salary for a similar service. There is no compensation for owners or partners allowed in the case of Firm No. 54.

I was under the impression that the local manager handled all the affairs of the company at this particular market. His time, of course, is shown in here. If the owner spent actual time in the management of this branch house, that should be given consideration. There is nothing on Schedule 2 of the blue audit of Firm No. 54 which indicates that either an owner or non owner is a general manager. The designation is made on the basis of the main part of the individual's duty and I understand that there is one of these individuals who is manager of this company. The first individual, Mr. Reid is the manager and is designated as cattle salesman. They were asked to divide the time that they spent in the different functions and, of course, if the accountant couldn't get it, we could not make any distribution. I have found in previous experiences that fre-[fol. 565] quently an owner may spend his time on cattle selling and leave the question of office management to an employed individual. There is a form of management other than office management. I think it is not possible to make a comparison between the Bethlehem Steel Company and these respondents. The type of management has nothing to do with the efficiency of the management as a general proposition. Firm No. 79 is a sole ownership. There is no salary for owners on Schedule 2 of the blue audit for that firm. The owner was acting as a cattle salesman for the entire year. The income per car for cattle and calves for Firm No. 33 was $17.56, the cost is $19.65. That would be a loss of $2.09 per car without compensating the owner. On hogs it shows a gain of 94¢ per car, and on sheep a loss of $1.59 per car. The blue audit shows a loss in operations

for this firm during the year with no allowance to the owner.

The selling price in the commercial field is whatever the traffic will bear under the circumstances. The risk feature should be considered both in the commercial field and in rate making. I lean toward the idea that they should not go into costs because they are extraordinary. In determining the per unit costs I believe the regularly occurring items should be included and anything of an extraordinary nature should be given consideration in a different way than through unit costs. My idea is embodied in Government [fol. 566] Exhibit No. 15. I have not questioned any of the costs as to whether they are reasonable or not. I could not set up a unit cost which includes these extraordinary and unusual costs, because I am not an expert in the commission business. I would not set up a mythical company as a test of efficiency. I stated that the elements of cost of service which I have used in this study have been based on the actual costs that had been incurred, without giving consideration to their reasonableness. I knew that the question of salaries was to be handled separately and I debated with myself for a considerable period of time as to whether I should put them in or take them out entirely. I repeated that these salaries of owners shown in here should not be taken as the amount of salaries to which they are rightfully entitled. I do not know what that amount is, and there should be substituted therefor the reasonable amount of service in comparison to what is paid to a bargained individual for a similar service. I stated I was going to pass on to the Secretary the question of dues on memberships, but forgot about the one that was rented. That should go into the same category. I feel that if one goes out the whole thing should go out. Gross income is used as a basis of allocation for business getting and maintaining expense, general administrative expenses, and general soliciting salaries. Sixty per cent of the total expense is allocated directly. That portion of the forty per cent which is allocated on the basis of commissions is allocated on that basis [fol. 567] because it is quite customary in business to set aside a certain percentage of gross income for advertising our business getting.

I grant that salaries are a part of the thing to be regulated. I cannot see that we are traveling around a circle.

Whether the rates are right or not right, the question to be considered is whether these rates are reasonable. I didn't question them for one minute. I put them down as I found them, with the exception of salaries. In respect to owners' salaries, where the withdrawal is considered with salaries there would be an element of distortion in the relationship as between firms. In making up the typical elements of cost I would include all ordinary costs, whether they could or could not be distributed to the various services, that are incurred for purposes of determining a unit cost statement. One could not determine the cost of the individual service unless the cost incident to the rendition thereof could be separated with reasonable accuracy. I would include as an element the accrued amounts representing the exhaustion of assets or consumption of supplies. I would include depreciation on depreciable property, labor and materials, insurance protection, except where it is strictly personal, and taxes. If the insurance is payable to the organization, then the expense could be allowed, but the amount of that policy when it becomes payable should go as a credit against that expense. I feel that the present evidence would be that it would be very difficult to allocate the payment of that policy to the various years. That would be an actuarial problem. There might be a profit [fol. 568] on that insurance policy or there might be a loss on it. There are numerous different ways in which insurance policies and insurance payments can be handled on the books. The proper way would be either to include the expense and accumulate or accrue the income which would be derived at the time the policy becomes payable, or eliminate both sides. That is the way I would handle it for rate making purposes. In case of Federal income tax, I would allow it for a corporation and not for an individual. For a corporation it is an allowable expense. For an individual it is a tax personal income.

I have never considered non-productive time in costs. I have always eliminated time and considered time as a necessary part of the selling price, but not to be taken into consideration in determining costs. I have never met with stand-by time, but I have met with non-productive time. I have set up an account to which was charged all such non-productive time, but that would not be taken into the unit costs. There is fluctuation in the volume of receipts com-

ing to this market, and with such fluctuations necessarily come peaks.

Averages mean nothing, because the shortcomings of one organization are combined with the shortcomings or good features of another organization. As long as human beings differ in their relative ability there may be differences that properly exist in the compensation they receive for the service rendered. Those differences would be accentuated [fol. 569] in a business where skill and ability are a vital factor in the results secured for the user of the service.

Firm No. 54 maintains a record showing a particular species in respect to which the individual goes into the country. In the case of that firm, business getting and maintaining expenses were allocated directly. The results are not uniform, but I would say that the study is just that much better for the reason that some costs could be allocated directly. I would not classify that as distortion. The fact that it makes variation in the per unit cost of a particular expense does not distort the picture. There is only 20% of all of the expenses of all of these firms combined that was distributed on the basis of revenue. Another 20% was distributed on the basis of account sales, owners, and drafts. Suppose an individual or a company gets 100 cars of cattle, ten cars of hogs, and five cars of sheep. It appears very possible that that firm spends its time in the ratio of 100, ten, and five, and it does not seem unlikely that the ratio would be very well maintained through these organizations.

In the case of Firm No. 72 on page six of the cost study, the income per car from handling sheep was $25.23, and the cost of handling was $44.37. That firm hired its salesmanship on a basis of splitting the commissions. When there are 54 account sales and owners, and two of those 54 units are applicable to straight-car shipments of sheep, we have [fol. 570] 52 remaining, which divided into 235 sheep gives an average of about five sheep to a shipment. It is not a distortion. I have the impression that there is train running in connection with the handling of sheep, and I allocated a portion of the yarding expense for that purpose.

As I see it, the difference in the unit costs for handling sheep as between firms 46 and 72 is due entirely to volume. The variation exists. In the case of Firm No. 72 there were numerous small shipments of sheep that may not be the case with Firm 46. Firm No. 72 hired its office facili-

ties for $900. It cost this firm considerably more to do business than it did Firm No. 46. This is one instance in which no advantage was obtained by bargaining. The average per head income of all firms is shown to be .5582¢ in respect to cattle and calves. Sheet 7 of this same exhibit shows all expenses for cattle and calves. The average per head cost is shown on page 8 to be .5341¢. That includes all expenses taken into consideration in determining the per unit cost. It does not include any interest for invested capital or for working capital. It includes salaries and withdrawals as they were set up on the books, but not in all instances. Expense for horses is charged only against cattle and calves. Membership dues are included in the determination of per unit cost. If a firm holds a membership for an employee and pays the expenses of carrying that membership, the expenses are included. These ex- [fol. 571] penses do not include anything for bad debts or for risks. The term "all expenses" should not be misleading to an accountant. It can be very readily determined just exactly what is comprehended by the term "all expenses." One must take the entire report, along with my explanations, in order to understand accurately this expression "all expenses." The difference between the total average cost and the total average income per head of cattle and calves is .0241 or, in other words, $2.41 per head. The per head expense is 95.69% of the per head income. For the entire group of firms that is an operating ratio of 95.69 to 100. The 4.3% would shrink in amount as the other expenses were included. The question of business getting and maintaining would have to be considered as to whether or not it is too high or too low, and adjustments made accordingly. Consideration should also be given to the expenses entailed in connection with the necessity of defending the rights of market agencies in investigations into their rates.

Redirect examination:

The figure .5341 on page 8 of Government Exhibit No. 15 is a straight average. It is the total number of head for the market divided into the total expenses. The same is true of the figure .5582 on page 54. On page 7 of the Government Exhibit No. 15 the figure at the head of the right hand column is .4116. That is the per head cost, and all

expenses are included in this statement in the determination [fol. 572] of the per unit cost. The first figure in the right hand column on page 53, which is .5247, is the per head income for firm No. 4 for all commissions received from cattle and calves. The difference between these two figures is .1131, which is the profit per head in the handling of cattle and calves by Firm No. 4. This profit is in no way reduced or increased by the fact that the difference between the figure .5341 on page 8 and the figure .5582 on page 54 is not as much as 11¢. The first break down on expenses is under the heading of "Expenses" on pages 9 and 10. It is there broken down into four salary divisions and into four expense divisions other than salary. Each one of these columns is later on again broken down. Administrative and general expenses are shown on pages 35 and 36. The allocation of these expenses to the various species is shown on pages 49 and 50.

The break down on salaries is shown on pages 23 to 28, inclusive. On page 23 and 24 appear the salaries of owners for selling and buying. That column includes the drawing accounts and the splitting of profits with respect to owners, which I have already described. I did not attempt to pass upon the reasonableness of these amounts as owners' salaries. If the Secretary should find that the items of expense, the total of which is represented at the bottom of the third column on page 10, are unreasonable and should substitute figures as reasonable the total of which is [fol. 573] represented, the figure .5341 on page 8 would be changed. If Firm No. 72 had employed office employees rather than contracting their office work, I do not know whether they would have saved money by that process. I know of no better methods of allocation than those which I have used. I have been thinking over the question of the allocation of expenses as between the different modes of receipt of the same species, but I cannot think of any way in which it can be done from an accounting viewpoint. There is a reason for not segregating buying expenses from selling expenses. Certain phases of the expenses can be allocated to buying and to selling. Salaries in certain instances can be allocated directly, but I did not know how to allocate the overhead.

It is not the custom of accounts to consider as capital in a particular business all possessions of value which the partners in that business may own.

Continuation of redirect examination:

I believe that hazards and uni-surable risks should be considered and should be included in the rates. If they are included in the rates that part of this tariff which is over and above the reasonable expenses and which is put in there for the particular purpose of taking care of those risks will produce cash for that particular purpose. I do not think that firms need to set up and maintain as a part of their capital investment non productive cash reserves to cover hazards and uninsurable risks.

[fol. 574] When I stated that the item of bad debts should be considered, I had in mind that such an item is out of the ordinary and may be very big in any one year. To include it for that year would make that unit cost vary perceptibly for an item which is out of the ordinary. I mean that it should be given consideration and passed on by the Secretary. I cannot see how an increase in the commission rates would necessarily increase the cost or expense of conducting the business. The salaries of employees in the commission business are almost generally on a time basis. The salaries or split commissions are on a unit basis. We used the account sale owner method of allocation of office expenses because those factors took up most of the time of the people in the office.

Recross-examination:

The averages on pages 7 and 8 of Government Exhibit No. 15 take the total number of head of each species for all firms and divide that into the total expenses. What I have in mind by weighted average is to give a greater percentage of weight to one species in order to bring it on an equality with other species. I use the term "straight average" where there are a number of firms with a total expense and with the number of head handled by the individual firms. Taking the total expense and total head will give a straight average or a composite average. The per head cost of cattle and calves for the last firm shown on page eight is $1.0856. The income is .6677¢. That firm [fol. 575] operated for about eight months during the year. In case of Firm 85 the cost per head is .6790. The income per head is .5483. That firm operated during the entire year. The owners withdrew $2,425.74 and the business

showed a loss for the year of $1,869.25. I do not know whether this firm is still in business. The total expense of Firm No. 4 and the total head of the same firm being included in the totals of all the firms necessarily would affect the computation of the composite per head cost. For Firm No. 6 the cost per head is .6982, and the income per head is .5388. The cost for Firm No. 7 was .4950 per head and the income was .5228. For Firm No. 8 the cost was .6741 and the income was .5679. For Firm No. 10 the cost was .4811 and the income .5205. The regular fulltime employees of Firm No. 7 are apparently engaged entirely in the selling and buying of hogs, and the company pays for selling services for cattle, calves and sheep. In the case of Firm No. 10, there is included directors' fees in the amount of $1,322.96. I do not know whether the directors are owners of the business, or what additional service, if any, was rendered by the owners. According to the cost study this firm made a little less than 4¢ per head profit on cattle and calves. I made no attempt to determine, and feel that it is not within my province, to state which firms are typical. The income per head on cattle and calves are firm No. 10 is $.5205. For Firm No. 54 the cost is $.5025, and the income is $.5510 per head on cattle and calves. There is nothing included in the expenses of this [fol. 576] firm for salaries of owners. I said that as far as accountants are concerned, it is not their province to make valuations of assets. Mr. Henrici made a valuation of the fixed assets of the Stockyards Company in connection with a stockyard rate hearing, but the accountants did not do that. There is a considerable difference between rate making for stockyards and rate making for commission men. In stockyards investigations value plays a most important part, and in this study for commission men the matter of furniture and fixtures is a minor factor. They are both considered.

I feel that I have not sufficient practical knowledge of this business to determine whether the presence of additional buyers on the market is of value to the market. In a competitive field the more profitable a business becomes the more likely competition is to increase. It is also true that the more profitable a business is in a competitive field, the greater is the likelihood of an increase in business getting and maintenance as compared with other overhead costs.

(Whereupon the Government Exhibit No. 15 was received in evidence.).

HOWARD D. DOZIER, a witness called by the Government, after being duly sworn, testified as follows:

I am economist in the Bureau of Animal Industry, Department of Agriculture. I devote the most of my time to keeping up with financial matters, particularly invest- [fol. 577] ments and general economic conditions in the study of such subjects as seem to be pertinent to the work of the Packers and Stockyards Division. The purpose is to collect information on general economic conditions which will be useful in rate cases.

I am an economist by profession, and am a graduate of Vanderbilt University and Yale University. I was formerly head of the School of Commerce in the University of Georgia, and later was professor of Economics at Dartmouth College. I have been in my present situation for the past six years. I have testified in stockyard rate cases at Detroit, Buffalo, St. Paul, Nashville, Denver, St. Joseph, Chicago and Kansas City, and in commission rate cases at Sioux City. In the summer of 1927, I made a very exhaustive study of the trade territory at ten of the leading stockyards. This study related to railroad receipts and the information was obtained from the waybills kept in the offices of the stockyards companies. I have made a compilation in the form of a report of the result of my study at the Kansas City Stockyards, which has been marked for identification as Government Exhibit No. 22. In this report there are three maps. One of them is found at page one, another at page 21, and a third at page 33. The information was classified into four groups, showing the relative drawing power of the Kansas City Stockyards in its trade territory. On page one the black area represents territory from which Kansas City received between 75% and 100% [fol. 578] of the total number of cattle and calves marketed from that area at all of the ten markets, including of course, Kansas City. On pages two and three information is set up for ten states which ship cattle into Kansas City, and each state is divided into the areas designated by the legend on page one. The black area in the State

of Kansas sent to Kansas City 854,205 cattle and calves, and to all ten markets 938,921 head of cattle and calves. The number of head of cattle received at Kansas City from this territory represents 36.2% of the total rail receipts of cattle and calves at Kansas City. Similar classifications were made for the territory from which 50% to 75% of the livestock was shipped to the Kansas City market, and also from the 25% to 50% territory, and less than 25% territory. On page 5 there is the beginning of an analysis of states by counties. The same explanation which I made in respect to states and territories applies on page 5. Pages 19 and 20 refer to receipts from Arizona and Idaho. The number going to these ten markets could have been wiped out of the picture without changing anything much. The same explanation applies to hogs, beginning on page 20, and on sheep beginning on page 33. The figures that I am working on are the figures with respect to these ten markets, and although there is a 50% to 75% area indicated in the State of California, it is quite likely that a good many more cattle went to some other market from that area in California than went to all these ten markets combined. [fol. 579] My study did not cover the stockyards at Fort Worth or Oklahoma City. It is quite likely that if Fort Worth had been included in this study, and the basic figures had been the cattle and calves marketed at eleven markets, some of this colored area which is attributable to Kansas City would have been another type of market area surrounding Fort Worth. There had to be a cut-off somewhere, and we would have not gotten through if we had undertaken to get the information for all markets. If I had taken 25 markets, it would have given a more nearly complete picture of the few markets in the center of the territory. There is a territory on the outskirts which does not represent the facts. (Government Exhibit No. 23-A, B, and C; 24-A B, and C; 25-A, B, and C, the same being the maps showing trade territory for the livestock markets at Chicago, Omaha, and National Stockyards, respectively, were marked for identification.)

The document which has been marked for identification as Government Exhibit No. 26 is a photostat copy of a table made up from the information for all ten markets, such as is included in Government Exhibit No. 22. This

exhibit shows the relative drawing power of each of the ten markets in its respective trade territory. The information is as of the year 1927, covering rail receipts only. I don't think it would be practicable to continue a study of this kind from year to year because of its expense, and because it would require some Government representative [fol. 580] to be in the stockyard offices almost constantly. Capital plays a very important part in a utility like a stockyard company, while in a commission business capital plays a great deal less important part. Some physical facilities are necessary but it is not the major service. If something should happen to a commission firm, the risks would run largely to the persons engaged in the business rather than the physical property which they use. In stockyard rate cases I have always tried to encompass all risks in the rate of return. In the case of a stockyard company, where the risk adheres almost entirely to the capital, a constant rate of return applied against that varying valuation that the rate maker may put upon the property will bring in a sufficient number of dollars to meet the entire risk, regardless of what the value is. In the case of a commission firm where only a part of the risk adheres to the capital, you can't tell what rate of return you ought to apply against a fraction of the risk until you know what percent of the risk attaches to the capital. In referring to the interst rate as being what the market agency would have to pay in order to get money, that includes an element of risk but is not all of the risk that is peculiar to this type of business. In a general way it is the risk that would be found in any loan.

Cross-examination:

I know the direct buying here has had some influence on the hog receipts at the Kansas City market. The figures which occur in Government Exhibit No. 22 include those [fol. 581] direct shipments which pass through the machinery of the stockyards and refers to the direct buying of Swift & Company. My figures do not include the directs to other packers located here.

It is my understanding that the direct buying here at Kansas City is as large, if not larger, than at any other primary terminal market.

It is evident that in 1920 about one-fifth of the total in-

spected slaughter is represented by direct movement. In 1929 the figure is approximately two-thirds. If the volume of hogs in the territory does not increase and the direct movement to packers does increase to this market, then necessarily the volume for the market agencies will decline.

I think competitive influences have to be taken into consideration in connection with the establishment of a rate. Such influences may affect in different degrees those classifications of service that are separately rated.

If you shift the fixed cost incident to the selling of hogs over on to the selling of cattle, necessarily the cost per unit of the remaining volume would increase.

I think there is some going value in the commission business that ought to be recognized, but as to how much or how to get at it, I am at a loss to tell you.

I think of good will as the habit which people have of going back to the same place of doing business. Good [fol. 582] will in the commission business is perishable unless it is cultivated. It is being cultivated all the time by the expense for advertising and the meeting of patrons and things of that sort. Good will, it seems to me, is reflected somewhere in the operating expense.

If the risk is an insurable risk, I think rates ought to be high enough to enable everybody to provide insurance to cover it.

If some market agency would not and does not insure, and then suffers a loss, he cannot set up that loss as being anybody's fault but his own.

The judgment of the respondents down there is, as I understand it, that it would cost more to insure against the risk of public liability than the probable loss. If I were called upon to make the rates, I would have that in the back of my mind as one of the things that is likely to happen. I do not know whether I could evaluate it in dollars and cents, but I would realize that it was there and try to give it what weight I thought it ought to have. What the insurance companies charge for writing such insurance is of value to the rate maker. I do not mean that the rate maker would have to translate that literally into the rates. It would be one of the factors which he would have under consideration when he made his rates.

The rate maker should also recognize the fact, if such

situation exists, that insurance companies charge higher [fol. 583] premiums for accident and health insurance on those individuals engaged in business as market agencies than in the ordinary occupation classed as non-hazardous.

If you are going to have a cost study and use that as a point of departure for establishing reasonable rates, the more complete and accurate a cost study is the better. I realize that mathematical exactitude is not always ascertainable. An owner cattle salesman is entitled to cover into the per car cost and carry that into the rates, an amount which is as large and no larger than he can hire it done for as well as he can do it. That would not preclude the owner from having an additional return, due to the fact that he was an owner and manager of the business. I think uniform rates are better for all concerned. I would not consider an average made up for all of the firms as of any weight, because that merely represents their own experience and the result under the existing rate. If you take that average and apply that to its business, you get back to the exact rate with which it started. If you assume that all of these agencies are getting a reasonable volume of business and handling it in a reasonably efficient manner, and that there are no un-sual experiences, or no unusual costs among any of them, it does not make any difference whether you average those things which you are going to take into consideration or whether you arrive at them by just inspection. If I found a firm spending a dollar a car for some insignificant service, or if I found [fol. 584] that its expenses were running $25 per car for some particular item, I would go back into all of the records that I could find in order to explain that un-sual conditions. If that is an unusual condition, necessarily I would not give it a great deal of weight. In the case of a new firm with very low volume of business, I would not give the experience of that firm great weight, for the reason that you could not penalize all the shippers to all of the other agencies down there with a schedule of rates high enough to make this sub marginal firm a paying and prosperous firm. If a firm wants to go into business and gets a very small volume they take that risk, and they expect to get volume enough to make them prosperous. They may be mistaken and the mistake is theirs. I would not take the experience of the most prosperous firm on the market, and the one

with the biggest volume, as solely ruling, for the reason that a schedule of rates under which that firm might live would be so low as to impose a hardship and make it impossible for many less efficient firms to operate. If I found a firm with a very low unit cost and it- stock in a class by itself, I would not let the experience of that firm influence me greatly. If for that identical item another firm is incurring three or four times as much expense, I would not let the experience of that firm influence me greatly. I would take the experience of an intermediate group of firms. Suppose we find a firm with a cost for yarding salary of $2.00 a car, and for another firm it is $10.00 a car. Immediately [fol. 585] I would go to the audits to find out an explanation of that car for that particular service. I would decide whether the experience as to that particular firm should guide, or what weight it should have in my final determination. I would analyze every firm in that fashion, and then when I was through I would go back and rule out those cases where the situation was unusual and isolated. When I was through, and I had eliminated all those unusual weights, there would be left a very large number of firms where the cost would be around $2.00 a car. From that point it is a question of judgment. I would regard as an un-sual situation, a case where a firm had gone out of business, or its volume was extremely low. When you work through the accounts of all these firms, and have made a comparison, your mind will be pretty well made up as to what is a reasonable expense for that particular service. To me a cost study such as Mr. Roberts will make, and such as Mr. Bachmann has made, gives certain definite facts as nearly as can be ascertained. From that point on, rate making, as I see it, is a matter of exercising the best judgment in light of all the facts that are of record. The theory of rate making which I would follow would be to ignore those items of expense in the case of any or all firms which were clearly unreasonable. The same firm might have other costs which were perfectly reasonable in the light of the experience of all the other firms. It is not a question of the total experience of one firm as compared with the total experience of *one firm as compared* [fol. 586] *with the total experience of* another firm, it is the comparison of the elements of cost or of the items of cost which would indicate the reasonable cost of operation.

It would be of some help to have the aggregate cost of all the individual services collectively. I would rather have it broken down a little more finely. I would rather see the experience of each firm with respect to each item. This schedule is fairly complex, and it seems to me that it would be very difficult for any cost accountant to test the tariff by cost, because some of those items are very small. It may be possible to test the reasonableness of your schedule completely by a cost study. The hauling of one bale of cotton a mile by a railroad is the same as hauling it another mile. There is variation in the character of service rendered in the case of the same class of animals. It might be economy for a shipper to have his cattle sold by one salesman, whereas it might be uneconomical to let a less efficient salesman sell it. The rate charged by everybody may induce shippers to come to this market, or it may drive them away from this market. When the livestock is brought into the yard, everybody charges the same thing for doing the same class of service, and the shipper must choose which one of the agencies he will use. Since rates are all the same, the rate factor in getting business is annihilated. The quality of service and the value of the service to the shipper is an element to take into consideration. No man can be 100% efficient all the time, and in this particular [fol. 587] industry the conditions vary from day to day, which will make it impossible, or very difficult for a man to render 100% service all the time. There is a small ratio between the value of the livestock sold and the commission charged. The raising of railroad rates by a flat 100% would kill a very great deal of railroad traffic. The situation with railroad traffic is not analogous to the commission business. Purely from the standpoint of the value of the service to the shipper of the livestock, it might be possible that you could double your rates and kill off a comparatively small amount of your business. You might lower the rate and get no added volume as a result of it. It is my impression that the percentage which the commissions bear to the proceeds of sale of livestock have been fairly uniform.

(Whereupon, Government counsel handed to Respondent's counsel, certified copies of the commission tariffs of the Baltimore Livestock Exchange, Cincinnati Livestock Exchange, Pittsburgh Livestock Exchange, Lan-

caster Livestock Exchange, and the New York and New Jersey Livestock Exchange.)

Respondents' Exhibits 19-A to E

Whereupon Respondents' Exhibits 19-a to 19-e, the same being copies of the tariffs of commission rates heretofore handed to respondents' counsel by counsel for the Government, received in evidence.

Chicago shows a wider area from which cattle are re-
[fol. 588] ceived than Kansas City. The average distance of hogs to Kansas City is about 183.5 miles; about 100 miles for St. Joseph and Sioux City. The figures which I have included in this study include all directs which pass through the stockyards and are recorded by the stockyards company, other than that the direct shipments to packers here are not included. The Exhibits do not include any arrivals conveyed to the market by truck or any other mode of transportation except rail shipments. It is my understanding that the trucking business is on the increase. Good roads have been an important factor in accounting for this increases. My observation for the last five or six years is that as good roads have radiated from these markets, the distance from which drive-in livestock comes to the various markets has increased, and that there is an overlapping in some cases which increases as the good roads increase. There is an area I think between Sioux City and Omaha where there is a considerable overlapping. I would suppose that there is competition for truck-in business between St. Joseph and Kansas City. It is natural to suppose that from the immediate vicinity Kansas City gets more cattle from the county itself than any other market. The reason the county in which Kansas City is located is not included in the 75% area is because of the large number going to Chicago from the Kansas City market.

Kansas City is more competitive with respect to hogs and sheep than the National Stock Yards at East St.
[fol. 589] Louis. It is about the same with respect to cattle. Some markets are more advantageously situated than Kansas City and some of them less. I think competition reflects itself in operating expenses to some extent. Generally speaking depreciation is a legitimate operating expense. Ordinarily one's earning capacity is supposed to

be smaller when he is young than it is when he reaches his peak, and after he reaches a peak there is a decline in his capacity. The earnings which one accumulates may or may not follow that same trend. It is my impression that in the consideration of these questions we are supposing that every man down there is rendering A-1 service to the shipper. A test period has been selected and analyzed in minute detail. General information as to the past, and as much of it as possible, and as many facts as possible which will indicate what is going to happen in the future should be put into the record. Any experience you draw from the test period must be tempered by an exercise of judgment. Volume of business is an item which must be considered in connection with the determination of rates. The experience of each firm in my judgment should be analyzed, passed upon and evaluated, and the reasonableness of costs passed upon. If you bring an unreasonable cost into the average of all firms and all the expenses of all the firms in the same way you will aggregate along with every reasonable item every unreasonable item that is incurred on the market. When you take that weighted figure and work back into rate you will get exactly the [fol. 590] same rate, and you have done nothing toward the exercise of judgment as to the reasonableness of expenses. It is fruitless to count all unreasonable expenditures into your aggregate and then average it. If you are the most successful firm on the market, I would not feel right in covering your experience into the schedule of rates to be applied by everybody down there because to do so would reduce the chargeable rate under which the younger firm could not live. I have made no study of the rates at the markets shown in Respondents' Exhibit 19-A to 19-E. It appears to me from a perusal of the schedules that the schedules of charges as shown in Respondents' Exhibit 19-A to 19-E are higher than those contained in Tariff No. 2 of the Kansas City Livestock Exchange. My answer refers to the appearance of the schedule as printed and does not have reference to the revenue produced. If you applied the Baltimore schedule to the Kansas City business it would produce in my judgment considerably more revenue than the tariff now in force at Kansas City.

Redirect examination:

I did a great deal of work on the record in the Omaha Commission Rate Case. I am familiar with the order in that case and was present at the first hearing before the three-judge District Court at Omaha. I was present at the hearing before the special master and assisted in the preparation of material for the use of the Government counsel in the presentation of the case to the three judge [fol. 591] District Court. The material was appended to the brief of Government counsel. I heard the argument in the Supreme Court of the United States in regard to the validity of the Secretary's order in that case. I agreed with the theories and principles expressed in the order of the Secretary of Agriculture. I think the principles laid down in that case are correct principles for commission rate making. My understanding of the principle laid down in the Omaha case was that a schedule of reasonable rates for market agencies operating on the market should be such as to pay all reasonable expenses and a reasonable profit to all firms receiving a reasonable volume of business and handling it in a reasonably efficient manner. So far as the facts in this record go, nothing has yet been developed which would cause me to change my mind as to the soundness of that principle of commission rate making. I do not know of any facts developed in the record in this proceeding which should vary the application of that principle.

I do not know whether respondents' receipts would increase if direct marketing were eliminated. In my opinion there would be an immediate increase in the volume of hogs handled by the firms now operating on the market, and there would be a tendency because of the increased volume for additional firms to appear on the market.

When I said that the commission business is more competitive than the stockyard business, I had in mind the [fol. 592] conditions under which the commission business is conducted which bring about a shifting into the business and out of the business. The commission business is not as continuous a business as the stockyards business.

The stockyard business requires a big outlay of capital and is a more stable business than the commission busi-

ness. The commission men strive more with each other to get business from each other than the stockyard strives with its competitive yards to get business from them. It manifests itself in business getting.

In referring to averages on my cross examination, I was considering the average for the market as a whole. When I spoke of an average firm, I meant a normal firm, and by that I mean a firm which shows no abnormally high or abnormally low unit expenses. When I spoke of the present tariff of commission rates as being fairly complex it had no connection whatever with fair and reasonable.

Generally speaking, the effort to get business will manifest itself in advertising effort and expense where rates are uniform. Whereas, if rates were not fixed and uniform, this effort could manifest itself in a reduction of rates. That applies particularly to the so-called old line firms.

I do not think the commission rates are based on the principle of what the traffic will bear. I think a commission rate could be so high as to be unreasonable and [fol. 593] still not represent more than traffic will bear. The character of the business is such that if rates were doubled or increased very greatly they would not divert a large amount of livestock from the market.

The average distance moved by hogs coming to the Kansas City market by rail in 1927 was 183 1/2 miles. I am under the impression that the maximum drive in distance is about 100 miles.

If truck in hogs had been included, the map on page 21 of Government Exhibit 22 would have shown a greater concentration of trade territory close to the market.

Recross-examination:

I agree with the statement appearing on page nine in the Arbitrators' Award which reads as follows: "In reaching a conclusion as to what in their judgment will be a fair charge for the producer to pay and a fair compensation to the market agencies for the services rendered, the Arbitrators have in mind that it is not within their province to pass on the question of whether a firm has the right to act as a market agency. But they have approached it from the standpoint that the compensation should be reasonably remunerative to those efficiently

functioning as market agencies. It would not be to the advantage of the livestock producer to bring about arbitrarily such conditions as to cause necessary talent to seek a field for its services other than with the livestock market agency. It appears that the producer and shipper should be the best judges as to the quality of service fur- [fol. 594] nished them by the several market agencies and as to whether the service is satisfactory."

The judgment on the part of the shipper as to quality of service, in part at least, will be expressed in his action in sending his livestock to a particular agency.

As I remember it, the record shows that about 25 firms on this market handle about 75% of the livestock coming to the market. The remaining 25% distribute their livestock to the smaller firms. A small firm may be just as efficiently managed as a larger firm. I mean that a small firm, assuming that the business is large enough to justify its existence, may sell just as well, may keep its expenses just as low as a much larger firm. Our experience has been that the extremely large firms seem to spend a great deal of money on holding that large volume of business.

The element of value of service to the shipper is an element which I think has a bearing upon the rates that are to be determined. It is conceivable that one species of livestock, hogs, on this market in respect to their handling by market agencies would be exposed to a higher degree of competition than other species, and that some consideration of that might have to be given in the allocation of costs and in determining the rates. If it does exist and can be shown to exist, then it is one of the factors that the rate maker ought to have in mind. A change in freight rates might divert traffic.

[fol. 595] If there should be for some reason a sudden cessation of direct buying, some portion of the livestock which is now moving direct would, in my judgment, come through the regular market channels and be handled by the market agencies now in operation. That would increase the revenues by the amount of return applicable to that increased volume, but it would not in my judgment increase the expenses in the same proportion. That would naturally increase the profits of those firms that are now on the market and those increased profits might tend to bring additional firms upon the market, which in turn

would have a tendency to reduce the volume of the firms that were formerly on the market, and thus reduce somewhat the profits. I think rates should provide some surplus in the form of a reasonable profit. I doubt whether the situation with respect to capital requirements in the commission business is the same as that in connection with railroad and public utilities in connection with which a provision for a surplus is made. The commission business is so largely a personal service. I would provide for a surplus in some other way than a return on capital. Perhaps I would make an allowance for profits. All of the market agencies are centered here within one stockyard. They are drawing their receipts from the same territory and they are operating under much the same conditions. This being the case you can make a comparison of the unit costs incurred by one firm with the unit costs incurred by another. Railroads operate over wide sections of the country and I think the conditions under [fol. 596] which the railroads operate would make it more difficult to compare unit costs of one railroad with the unit costs of another, than is the case in market agencies. In this work there seems to be a parallel with respect to so-called business getting and maintaining and the extent of the territory, and that parallel would lead me to suspect the opposite of what your question assumes that as the territory becomes more extensive the cost of business getting and maintaining becomes greater. I have no facts which would enable me to answer that question as to business generally other than the commission business.

I know in a general way the work of the Bureau of Railway Economics and I have known some of the people connected with it for fifteen years. Its reputation is good. I have every reason to believe that they do careful and accurate work. I have seen Bulletin No. 38 which has been marked for identification as Respondents' Exhibit No. 20. I know nothing of the details of the information. I know in a general way how the information is collected and compiled. Whereupon Respondents' Exhibit No. 20, the same being the Bulletin heretofore identified, was received in evidence.

I note on Page 8 of this exhibit that in 1929 at Kansas City, for instance, the price paid by the purchaser for cattle and calves was $11.22 per cwt. of which the freight charges as defined in the report amounted to 23¢ per cwt.,

[fol. 597] and that the other costs of distribution, which include the stockyard charges for yardage, feed, etc., and the commission charges of the market agencies, amounted to 15¢ per cwt. For 1929 this total distribution of costs was 1-3/10% of the gross proceeds of sale. The same figure for 1924 at Kansas City appears to be 2-4/10%. The price paid by the purchaser at Omaha was $11.96 per cwt. The freight charges were 39¢ per cwt. and the other costs of distribution was 16¢ per cwt. The price paid by the purchaser at Baltimore in 1929 for cattle and calves was $12.11 per cwt. The freight charges amounted to 32¢ per cwt. and the other costs of distribution amounted to 21¢ per cwt. The cost of distribution at St. Louis is 20¢ per cwt. as compared with 15¢ per cwt. at Kansas City. The cost of distribution other than for transportation as applicable to hogs was 25¢ per cwt. at Kansas City and 40¢ per cwt. at Baltimore. Expressed as a percentage of the price paid by the purchaser at the respective markets, the cost was 2 1/2% at Kansas City and 3-6/10% at Baltimore. The same cost was 22¢ per cwt. at Omaha.

Redirect examination:

I testified that I would look out for the risk which the surplus was intended to meet in the profit rather than in the rate of return. Profit is compensation for risk carrying, and if you have allowed for all the risks in profit, you have allowed for the accumulation of a surplus. The surplus is a function of what you allow in the profit. Profit [fol. 598] is ordinarily defined as payment for management and for risks. When you have allowed all expenses and allowed the owners reasonable payment for management and you have allowed for all the risk there is of the business, then you have allowed a profit which when covered into the rates will provide the necessary surplus. Under reasonable rates you don't fix income, but you determine a reasonable unit cost which is translated into rates. Under those rates every man is left free to make his income dependent upon the volume of his business. There is no fixing of income here and guaranteeing of income or penalizing of income that is earned under reasonable rates. There are certain risks which the Secretary can see in this industry and some of them are so

definite that he can allow an operating expense to cover them. The Secretary will have to estimate that as best he can. Then there are certain risks which may happen once in five years. They are here in the industry and the rate must cover them. It goes into the rates through the profit that is allowed, and the surplus accumulations from the rates to meet the cost incident to the risk when it occurs.

Recross-examination:

When I refer to reasonable allowances for all of these unit costs, I mean reasonableness and good judgment wherever it can be exercised, with just as full knowledge as it is possible to ascertain. I have said that the rates ought to be high enough to cover the expenses of opera- [fol. 599] tion, pay a profit, and in that profit I include the risk which is natural to the business in the light of all the circumstances. Whereupon the witness was excused.

Government Exhibits Nos. 22, 23-A, 23-B and 23-C, 24-A, 24-B and 24-C, 25-A, 25-B, and 25-C, and 26 were received in evidence.

Laurence G. Trickett, a witness heretofore called by the Government, resumed the stand and testified as follows:

Government Exhibit 13-A shows the car receipts for the year 1929 of the commission, firms, packers and miseellaneous receipts. This statement shows the cars received for the various commission firms and others for the various species of cattle, hogs and sheep. Government Exhibit 13-B shows the car receipts of cattle for the commission firms, packers and others by months for the year 1929. Government Exhibit 13-C shows the same information for hogs, and 13-D shows it for sheep. These sheets show the receipts by rail only. They do not include the drive-in business. Whereupon Government Exhibits 13-A to D were received in evidence.

The Kansas City Stockyards Company is preparing an annual report of its operations for the year 1930. That

report has been printed and will be delivered to us today. It was prepared under my direction and in the same way as the previous reports concerning which I have testified in this hearing.

[fol. 600] Recross-examination:

The percentage of the total receipts of drive-in compared with rail receipts has been increasing. The business of the Harry Kennaley Commission Company consists largely of drive-ins. That may be true of other firms.

For the year 1929 yardage was four tenths of one per cent and the yardage and feed amounted to 88/100 of one per cent of the gross value of the livestock handled. The yardage charges at St. Louis and St. Joseph are the same as at Kansas City, but there is some variation in the feed charges. I would consider it highly impracticable for the stockyard company to have all livestock consigned to it to be sold by its employees. It would destroy the bases for the selling and buying prices of livestock, creating dissatisfaction among livestock producers, and eliminate competition. The livestock markets have been developed over a period of years and the natural method of handling the business was that the stockyards were not to sell or buy livestock. A great sum of money has been spent at practically all stockyards in developing a selling and buying power for the primary purpose of creating competition, which, of course, means a demand which is the fundamental factor in price. I do not believe that the stockyard company could maintain the high degree of efficiency among its employees in the selling of livestock which exists at the present time on the market.

Redirect examination:

I do not recall any other firm than the Harry Kennaley [fol. 601] Commission Company which devotes itself largely to the drive-in business.

The fluctuation in receipts from counties from one year to another are due to competitive factors as well as climatic conditions. It might be due to change of personnel of the concerns doing business at our market, the quantity of livestock produced, or changes in the freight rates or services. The primary factor which determines the market to which livestock goes in service, which naturally results in the

market price of livestock. I think the freight rate service and the time of getting into the market and the freight rates are also a factor. It is centralizing the livestock on the open market both in selling and buying that makes the market price. The more agencies there are on the market the more they would be out competing for business in the territory, advertising and endeavoring to bring more business to the market, which would bring more actual receipts to the market. It is not my opinion that it would be helpful to the market to have a growing number of selling agencies, assuming that the volume coming to the market remained the same. It is the desire of the stockyard company to attract as much business as possible and it is my opinion that the commission firms on the market are important in attracting business.

Recross-examination:

My attention has been brought to instances where livestock under billing to this market has been sold ahead of [fol. 602] the market at the Morris and Prospect feed yards. Those instances relate to cattle as well as other species of livestock. I do not know of any other market where the feed yards are so close to the terminal, open, competitive, public, livestock market. In 1920, Armour & Company was the only packer that had well developed stockyard facilities for receiving direct consignments. These were the Mistletoe private stockyards. Since that time, Wilson and Cudahy have provided facilities for handling directs. That has been within the last two or three years.

W. T. ANGLE, a witness previously called for the Government resumed the stand and testified as follows:

Recross-examination:

(Government Exhibit 8-I, the same being the annual report of the Kansas City Stockyards Company for 1930 was received in evidence.)

I think it is true that every stockman who purchases livestock on a market should have the services of a good stocker and feeder buyer. The ave[illegible]e countryman coming in is

not informed as to the cost or the money it takes to buy a particular kind of cattle.

I have noticed and observed the fact that there was a decline in receipts, particularly in cattle, for the last several years, and in hogs for two or possibly three years. It is my remembrance that along around 1925 or 1926 the [fol. 603] Kansas City market had its peak of receipts in cattle, and in hogs around 1927 or 1928.

Redirect examination:

I think there are many different factors and influences, some of which pull upward and some downward in respect to the receipts of livestock at the Kansas City market. The peak which was reached in 1925 was related to the World War production. I would say that the greatest influence, that I have observed in studying livestock receipts, in making light or heavy receipts has been the cyclic factor. From the study which I have made, there has been a tendency on the part of a number of market agencies to decline during the last few years, and one would naturally be inclined to think that it was associated with the decrease in receipts of livestock. From the information that I have on that subject, there is a tendency when there is a large flow of livestock through the yeards for a period of years for the number of agencies to increase.

I feel sure that each of the cattle salesmen in our firm do not sell the same numbers of cars. I feel sure that Mr. Ecton, our head cattle salesman, sold more cars than the average indicated in the audit. In my opinion the larger number of animals a salesman has to sell in his alley, the time he has to devote to each car or to each individual head is reduced. In further explanation, I might say that he usually has more of the buyers' time in his alley, and he [fol. 604] doesn't have to wait so much during the trading hours for the buyers if he has more of the animals in his alley that day for selling. I think that there is no question that if he prorated the time that he spent on each animal or on each carload on the days when he has large receipts and the days when he has light receipts, he has actually used less time in selling a large number of animals per car than he would if he had only a small supply in his alley.

Mr. Myers in our firm gives his time primarily to the selling of western cattle. He buys considerable cattle and makes country trips for inspection purposes.

To a certain extent we are specializing in one person doing the bulk of the buying in the heifer and cow division, and to a certain extent specializing in having one buyer buy the common to medium grades of cattle. Other buyers are specializing in the good and choice grades of stockers. All our cattle salesmen do some buying. Mr. Russell sells butcher cattle. Mr. Kilgore gives his time to the selling of stocker cattle, including stock calves and stock yearlings, and to a certain extent two year olds and fleshy feeders. He does some buying. He also does some yarding. In 1929 probably over half of his time was given to yarding activities rather than to selling. Mr. Scott gives his time to the buying department, buying cattle. Mr. Okeson gives his time to the buying and does some field work. Mr. Green has charge of the hog department and sells the slaughter [fol. 605] hogs. By far the bulk of the hogs are included in his alley that he sells. Mr. Green sells normally about 65 to 75 per cent of our hogs. Mr. Trautman sells the balance of our hogs and does yearding work. He also buys our stocker pigs. Mr. O'Connel does our buying and selling of sheep.

I believe the competition in business getting and maintaining efforts among the market agencies increase the expenditures of each market agency. During the year 1929, considerable progress was made in the enactment of the Federal Marketing Act and which has resulted in our organization being a part of that marketing machinery, and we thought it was no more than good to apprise the livestock men in this territory of the position we had in the marketing industry. To that extent we increased the expenses in our contact department so much. That was to a certain extent a special program.

The cattle coming to this market are largely white-faced cattle and are not as docile as the short horn breed of cattle.

Our organization is not primarily operated for the purpose of making a profit. In order for a person to become a member of our Association, it also is necessary for him to become a member of the National Livestock Marketing Association. The livestock loans are practically confined to our membership.

I think that ordinarily it is desirable to have some division of salesmen where there is a variation in the quality, weight and type cattle offered for sale so that this salesman [fol. 606] can handle them. Ordinarily in the selling of fat steers one man is ordinarily qualified if he has the proper experience and training to sell those that go to the so called big packers and order buyers, except some light weights that normally fall to the butcher cattle salesman on account that his buyers buy these light weight steers known as yearlings and baby beefs. In view of the fact that packers have their buyers trained to buy the same grades of cattle, all concentrated in one man to make such purchases, we would not want to think that our salesmen were not as well qualified to sell the same grades of steers as they are qualified to buy, but it is true that sometimes a salesman's experience and training has been confined to cattle from certain territories and he has not had sufficient broad experience in inspecting and trading and selling of other grades of cattle from another region. It might take him sometime to become qualified to handle South Texas steers after having sold almost entirely Missouri grain fed steers.

I believe that an agency on this market can render a good service, carry on the duties of livestock marketing without the necessity of the Market Practice Agreement or livestock exchange. The Producers Commission Association got along fairly well on the first 7 months of its business and built a business that was one of the largest in the yards. I have visited the Fort Worth market where there has been no exchange for years, and there is no Market Practice Agreement, and agencies there, including one of our own [fol. 607] agencies, are successfully carrying on the activities of livestock marketing with no handicap whatsoever.

Recross-examination:

As being a necessity to properly buy and sell livestock, I think exchanges or trade associations are not a prerequisite to rendering good service to customers in the buying and selling of their livestock. These trade associations or exchanges have all practically organized previous to the passing of the modern legislation which we have governing our market places. I do not believe that I have given any testimony to the effect that they have no place in the program. That does not at all mean that clearing house associations

and such institutions as that should not function on these markets, whether an exchange or a trade association is established or not. The purporse of our organization was to represent the livestock producers in the marketing of his livestock and the only power and authority to function as a market agency, and the only wish to operate a market agency, came from those persons being served. Naturally they wanted to be served at those places adjacent to where their livestock was produced and marketed. In choosing the places to open up the market agencies it was not a case of choosing those places where an exchange was operated, but it was a matter of coincidence only that that was true. In our opinion we did not consider that any market agency or several market agencies at these markets were respon- [fol. 608] sible for the volume that exists there. We attribute that volume as something that has grown and developed as the country developed and as the packers set up their packing houses here in the West. The stockmen shipped their livestock there originally and sold it themselves. Then some of the growers saw the necessity of regularly established firms to do the selling, who made it a speciality, and if I read the history of our markets correctly the livestock producers established these markets originally and did their own selling. I think that the influences that make price are not within any trade association, as regards our livestock. They act only as a medium of finding those price levels and there are instances in our country today where livestock is being marketed on a large scale without going through any sort of trade organization.

As regards the decentralizing of our present livestock marketing system, we have gone forward on a program of utilizing in so far as we thought was well and good for the interest of livestock producers the existing facilities in livestock marketing, and wherever possible to supplement the existing system. We have made no effort of any consequence to take livestock away from the terminal market, where we thought it was being handled to better advantage and yielding the producer a greater net return there than any other place. It has been our program to work on one of efficiency and there is some question whether or not the piling up of tremendous quantities of livestock every morning in the shadow of the packing house, where the packer [fol. 609] buyers know that the stock is going to be sold,

removed such a distance from the owner's location that it cannot be returned without considerable cost, does not give the buyer a very strong advantage. There is some question as to whether or not there might be a better scheme. On the whole I think the fundamentals of the Trade Practice Agreement are entirely satisfactory and we follow them, and other agencies follow them, and we would follow them whether it existed or not. The undesirable feature of it was the fact that it limited the number of days that our agency could spend at soliciting business or servicing its customers in the country or carrying on its educational work among livestock groups in the country to thirty days each month. There are periods in the year when we have a large volume of livestock moving that we could probably use to advantage a greater time than thirty days. It works a hardship on an agency that has a large volume of business flowing to market at any particular season. In explanation of the *the* thirty days, I will say that that means all the individuals of the firm eligible to do soliciting in the country are limited to thirty days service in any one calendar month. The other factor that we objected to was the deposit of $10,000, which in a general way does not materially affect our services to our customers, but it does place that much money in a place where it does not yield our organization the maximum return that could be secured if it were invested in our business. It brings us 4% and we pay 8% on our float.

[fol. 610] I am not sure that Rule 19 concerning solicitation is for the *the* purpose of limiting expenses. That rule applied to a small market agency could not be considered as a factor limiting their expenses. It has occurred to me that such a rule should be based somewhat upon the business handled by each agency the previous year. In other words, each agency should be given the amount of time in the country to service its customers in proportion to the number of customers served the previous year. If a firm has eight or ten thousand cars of business a year, I think it is certainly entitled to sufficient time to service its trade. If the rule were eliminated, I think it would have a beneficial effect upon all the larger agencies that do a large business. Rule 20 of the Market Practice Agreement regarding soliciting of consignments in transit and prohibiting solictation at the drive-in gates or unloading docks has been satisfac-

tory and is a worthwhile rule. Rule 21 regarding the payment of telephone bills is a good rule. It possibly has some effect toward cutting down the money expended by market agencies. Another paragraph in this same rule with respect to the furnishing of meals and lodging by market agencies may tend to restrict expenditures, but it is my thought that agencies operating under average conditions, without a rule such as that kind would be guided by good judgment in its expenditures. There is a question in my mind as to whether or not the rule does not go too far into the management of the individual agency's business. I believe that the principle of industry cooperation is a sound [fol. 611] one. I think it depends on whose interests you are considering and I believe that there are benefits for agencies that have common interests operating on a market to associate themselves together. The question is as to whether or not by any exchange you are limiting certain incidental expenses, results in material savings to those agencies or not. And granting that it does result in saving, it still does not follow that it results in a benefit to the industry as a whole. The fact that you limit a market agency's expenditures in one way does not mean that that agency might not expend an amount to offset the saving there is some other activity toward getting business.

Some of the funds referred to as Farm Board funds have gone into the capital structure of the National Livestock Marketing Association and at least one of its subsidiaries.

It is my personal opinion and the opinion of the National Livestock Marketing Association and the Federal Farm Board that we would have a better set up at our terminal livestock markets if we had fewer agencies and stronger agencies, giving them more resources and permitting them in the collection of their commissions to save possibly a greater proportion of the commission charge as a reserve. The whole marketing end of the business would be improved without working a hardship on anyone engaged in the business. I think we carry insurance to protect us against the risk and hazards that are incident to our business. If there are any that I have escaped, I don't know what it is. We [fol. 612] carry the mortgage and theft insurance, employees' liability or compensation insurance, but we do not carry any public liability insurance or insurance against bank failures. I did not know that insurance against losses

due to bank failures while drafts and checks are in the course of collection was available. We carry a policy protecting us in case our checks are defaced. We carry fire insurance and shippers' proceeds insurance and in addition we carry insurance on all employees handling cash.

In my opinion it is all a matter of volume and the ability of the salesman and his training as to whether or not he is qualified to sell all grades or just one or two grades of cattle. The specialized plan of having salesmen to sell those different grades or classes of livestock is desirable, so that the shipper may have the very best advantage possible in having this livestock displayed and offered for sale at the time the buyer is wanting to look at it, and by a salesman who is well posted on how to price it. We, at one time, had under consideration the employment of another salesman. I stated that the purpose there was for further specialization and also to take care of some of the increasing business which we are handling. I think that the more information a salesman can have as regards the entire cattle situation, crops, supply and demand, the better he can serve his customers. There are a number of factors that enter into the time that a salesman will have to give to each carload or each animal he has to sell depending upon the volume that he has for sale. If it so happens that he had [fol. 613] got a large run of livestock and there is a small run on the yards, he has a large portion of the buyers' time in selling his livestock on any one particular day. He gets to show his livestock probably to better advantage than if he has a small run and other agencies have a large run, and he has difficulty in keeping the buyers in his alley any length of time. It varies somewhat as to the time that he has to spend in selling livestock or different classes. The stocker and feeder animals sell more rapidly than fat stock. More often fat stock is slow to sell and difficult to obtain prices satisfactory to the seller and the shipper. Veal calves ordinarily sell promptly in the morning. I have never engaged in selling livestock on a terminal market myself. I have often been in the alleys. The reason stockers and feeders sell more readily than fat cattle is the strong competition in the market between feeder buyers, particularly the so called traders. It is generally true that the person who sells the highest priced steer cattle get the larger salary. They are confronted with the very best

talent that is on the buying side, and one has to put up a salesman as nearly as possible that is equivalent or if possible superior to the buyer he is going to sell to.

Government Exhibits Number 27 and 28

Government Exhibit No. 27, the same being Table No. 3 in the Livestock Census Reports of January 1, 1925, covering the states of Arizona, Arkansas, Colorado, Kansas, Missouri, Nebraska, Oklahoma, Texas, and Utah, and Gov- [fol. 614] ernment Exhibit No. 28, the same being the separate from the Yearbook of 1928, and issues of Crops and Markets from January, 1930, to October, 1930, (Counsel for Government designating those parts of these documents which are to be regarded as the exhibit) were offered in evidence.

H. W. Garrison, a witness called by the Government, after being sworn, testified as follows:

I am hog salesman for the Farmers' Union Livestock Commission Company. I have been with this firm eight years and prior to that time I was a speculator and order buyer and also bought hogs for Morris and Company. I started in St. Joseph for Morris and Company and was transferred to St. Louis and then to Kansas City eight years ago. I operated as an order buyer and speculator on the St. Louis market for about four years.

There are four other boys besides myself in the hog division of the Farmers' Union. I have one that I call my assistant that does most of the sorting early in the morning and sells what we call "throw-outs", that is, the light lights and stock pigs, packing sows, and stags. We have one boy that brings truck-ins from the north gate and we have another boy in the alley that helps to sort. We have a night man that yards cattle and hogs that come in during the night. Our truck hog man gets down there as early as [fol. 615] possible because a lot of those hogs come in in the night. If he has a red bunch, whit- bunch, and black bunch, he will throw those three bunches together and bring them over to save time. If they are all mixed, he will take and mark different bunches and bring them over together and then we sort them out when we get them into our alley.

We never get very many big bunches in the truck division. If the bunches are different colors, it makes no difference how big they are. If the different bunches are the same color, he does not throw them together without marking. He carries a pair of shears and marks them different ways on the rump and puts that mark on each ticket. We do not aim to let him throw too many together. He will throw three, four, five or six bunches together. Most of the truck hogs arrive from midnight on. Most of them are in by 11 o'clock. Just as soon as we get through with him over there we use him in our alley. We are generally ready to weigh our hogs and we use him the balance of the day.

Hogs arriving by rail are received by us at the unloading chute. We do not keep a man down thereafter this night man goes home.

Our boys get down to the yards generally about 6 to 6:30 in the morning. Hogs arriving in the winter time are yarded downstairs where it is warmer. I get down to the office about 7:15. There are generally shippers in the office in the morning and we visit with them a little bit to find [fol. 616] out what they have, and if there is any special way that they want them sorted or sold.

I generally wait for the mail to come in in order to get any instructions which might be sent in, or manifest sheets, which are very important to us in the yard.

The hog market opens at eight o'clock. If the market is good, we will start selling shortly after eight o'clock. In order to determine what we are going to ask for hogs, we will look at the board and note all the receipts at the different markets. Sometimes prospective messages come from Chicago, and in the summer time we get the Chicago market. Most everyone goes by the Chicago market more than anything else. Of course, we can make up our mind as to what we think it will be, and if we sell hogs before we get the market, it is just our gamble.

I will go down to the men that I think will buy the kind of hogs that I have. If I have a lot of good light hogs, I will go up to one of the order buyers and price them to him. He will probably bid me and sometimes I sell them to him right there. If I think he has not bid me the market, I go further and get somebody else. If the market is going to be real good, the buyer will come to me and if it is not, I will have to go and get them. The offers and bids help

to determine the slant the market is going to take. Generally order buyers start bidding on hogs shortly after eight o'clock.

My assistant salesman early in the morning is practically [fol. 617] a head yardman. He weighs the stuff that he sells and does the sorting and does as much work as a yardman as he does as a salesman. The proportion of hogs sold by him will vary at different times of the year. I expect he will sell one fourth of them when light hogs and stock pigs are running heavy. It would not be that much now. I sell the bulk of the hogs right now because they are coming good and heavy. The summer months are lighter than the winter months. We have two light periods. April and May in the spring, and August and September in the fall. We have five pretty fair days a week in the hog alleys.

As fast as I sell the hogs I give the pen numbers, firm that gets them, and any "outs" that may be taken out, to the yardman. Practically every day I am in the yard until we are weighed up. After the hogs are weighed, I mark the tickets and get those ready for the office help. Then I generally have quite a little correspondence to do, answering inquiries about the market and stuff like that. I do not buy any hogs other than stock pigs to fill orders.

In most seasons of the year we aim to sort the hogs from 160 down and out and all the sows and the packers and thin hogs. If the light hogs are bringing the top, we might sort them a little deeper so as to get more in at the top price. If there is not much difference in the price, we will not sort them so deep. These are yarded in another pen and my assistant takes charge of those and sells them. I [fol. 618] might have to sort that load that is left maybe two or three differ-nt times. Where there are many owners in one load of hogs, we have to sell them and get the market for each bunch as nearly as possible.

The bulk of our business is made up of plural ownership consignments. They are mixed more than the straight loads of hogs. They are marked so that we can identify the ownerships. If they are of the same weight and quality we do not have to split them up before they are sold.

If it is a good, active market, a man can dispose of quite a few hogs, and if it is not, I have seen times when I couldn't get rid of very many hogs in a day's time. Day before yesterday was a bad market and it took me all day

up to three o'clock to get them all sold. I believe I had 21 loads of hogs and I expect three or four hundred truck hogs.

The past year was an unusually light year. Friday is a very uncertain day. We might have one or two or we might have eight or ten loads on that day. Wednesday is always our biggest day and is our hardest day. I really don't know how many hogs I ever sold in a year. There are days during the past year when I could have sold more. The largest number I have sold in one day was 58 loads, when I had 62 loads to sell. I did that with the assistance of my helpers. It was a very active market.

I think we had 175 truck hogs today and no car hogs. Yesterday we had 16 loads and possibly 300 truck hogs.

[fol. 619] Cross-examination:

The hog yards at St. Louis are on the same floor where the hogs are unloaded and the yard company delivers them right to your pen. That makes it easier because you do not have to have a man down there at the trains. The truck hogs are unloaded right at the yards at St. Louis and they do not have to drive them very far. This is about the most unhandy yards for handling truck hogs of any that I have ever visited. I guess it is pretty near a mile from where they are unloaded to our pens. Truck-ins at St. Joe and Omaha are handled in truck divisions. I believe the hogs are sold and weighed up right in those divisions where they are unloaded.

The Farmers' Union organization has devoted a lot of time and effort and money to the building up and strengthening of the shipping associations. I think the Farmers' Union started the business of a commission agency at this market about 1916. It has a rather strong organization in the State of Kansas. As a market agency, we get support from that organization.

The book-eepers and other men in our office have to work very late at night on many occasions to get out their account sales. I suppose this week our whole office force has worked until about seven o'clock or eight or nine o'clock. I think the whole gang ate down there by the Exchange Building Tuesday, Wednesday, and Thursday, and went back after supper. We have our yard boys working in the office after they get through in the yards. That is a [fol. 620] very frequent occurrence in the winter time.

There is such a thing that a salesman, no matter how efficient or experience- he is, may be overworked and not able to get the results he would like to. As a salesman, I appreciate the value of having a sufficient amount of time to work out my hogs. It does take experience, and long experience, to make a hog salesman. I think there is more in judging a market than there is in judging the hogs, but you have to be a good judge of the quality and weight of hogs. Not every man that goes into the hog alleys with experience becomes a competent hog salesman. A salesman has got to have a lot of pep, personality and nerve.

Respondents' Exhibit No. 13 shows a pretty good classification of hogs.

Recross examination:

The account sales are all figured up on the day the sale is made, but they are not all sent out that night. If they have a lot of prorates they cannot get them all out. Shipping associations in Kansas connected with our organization consign the biggest part of their hogs to our firm. Our firm depends upon the voluntary action and close association existing between it and the shipping associations in order to hold their trade. There is no contract compelling them to ship to us.

Redirect examination:

[fol. 621] I think all the commission firms on the Kansas City Market make an effort to get Association business. The chief reason why a shipper selects one commission firm in preference to others is the one that can give him the best service.

Recross-examination:

I remember one year our firm paid back $30,000 in patronage dividends and St. Louis paid back over $100,000. Ours has always been smaller.

Redirect examination:

The volume handled by our firm is not as large as those organizations at the other markets.

Recross-examination:

There is no general section of the country where the Farmers Union is any stronger as compared with other

organizations than it is in Kansas and Missouri, as far as I know.

(Whereupon the witness was excused.)

[fol. 622] (Whereupon corrected copies of Government Exhibits Nos. 13-A, B, and C were substituted for the copies originally introduced.)

Government rests its case.

CHARLES F. VIEREGG, a witness called by the Respondent, after being sworn, testified as follows:

I am in the sheep commission busjness at the Kansas City market. My firm is the W. M. Leitch Sheep Commission Company, and is a respondent. My partner and I have the same drawing account per month, but after that I have three-fifths interest.

Robert H. Stover is my partner. I have been engaged in the sheep commission business going on 13 years. I was with Wm. M. Leitch who is my father-in-law, and who was in the sheep commission business for about thirty years at the Kansas City Stockyards. Before I went into the sheep commission business I was one of the buyers for Fred Harvey Company. I was familiar with the sheep business for a good many years before I went down to the yard. The firm is still the largest exclusive sheep commission company there. In the number of sheep handled John Clay and Company will handle more than we will. In my first capacity with Mr. Leitch I was a yardman, did the weighing, yarding, feeding, watering, and sorting. It was a couple years before I sold anything, and then I could start out selling just cripples and odds and ends. I would say it was about two years before I was considered qual-
[fol. 623] ified as a sheep salesman. If we sold anything Mr. Leitch was right there as he was the main man all the time up until he took sick. The sheep pens are at the south end of the yards. They are all on the ground floor and are covered. The Stockyards Company attends to the unloading of the sheep at the chutes and they are delivered to the pens where they are yarded. The company starts bringing the sheep from about six o'clock in the morning

from the chutes, and our yardman is there to receive them. The Yard Company does not necessarily yard the sheep, but turns them down the alley to us and our yardman will take them and put them in a pen and get the man's name and number of head from the Yard Company. He puts a record of them on a card. The same process applies to the drive-ins only they unload them right there at the pens. The Yard Company employees are in the drive in alley to receive the sheep and they would have to yard them if our man was not there. If it is before six o'clock the Yard Company will yard them, and if it is after six the chances are our man will take them and put them in a pen. If the sheep come in in the night of a drive in ship is left in a box by the Stockyard man. Every commission company goes to that box and gets out its own drive in slips. Our yard man will put them all down on a card and the chances are he will put the sheep closer to the scales. Our yard man is an old experienced man and does sell some of the drive ins. He is qualified and a good judge of sheep. His duties are to be there at six o'clock in the morning and [fol. 624] recieve all these sheep and see that they are watered. If the sheep have been on the road for 24 hours and need feeding he feeds them. If they are out of a near by feed lot and are full we do not feed them. When Mr. Stover and myself go down we get the card that our yard man has made and we copy it; then we will go into these different pens of the sheep and we will decide what we will do with the sheep and just how we will sort them. If there are ewes, the first operation will be to sort them off. What we do depends on how they are mixed. Then, we will take these ewes and put them in small pens and "mouth" them. There are yearling ewes, two year old ewes, three year old ewes, four year old ewes, and what we call a "solid mouth." Then, we will have what we call a "short solid mouth," where the teeth are just about a quarter of an inch high. Then there is a broken mouth ewe, which is all right for a one year breeder. Then, we have what we call a "gummer" which has to be sold for just what it is. Of course, you can generally get more for a yearling ewe from a packer than you can an old one. After it is a year old you cannot break joint and you cannot fool anybody on it in the cooler. Different values are attached to different ages and conditions of ewes. In "mouthing" them we have to straddle each sheep, take hold of its mouth

and open it and look at the teeth. All three of us do yard work, sorting and weighing. The market is supposed to open at 8 o'clock and the packers quit buying at 3 o'clock. [fol. 625] Breeders can be sold at any time. I would say the average day is from 6:30 to 6:30. Sometimes we get away at 5 or 5:30, but the average night we are there at 6 o'clock. In certain seasons we are still there at 8 o'clock. During the drive in season there are so many consignments of 1, 2, 3 or 5 head. There is just as much work to one head as there is to ten head, but there is possibly more sorting with the ten head. We do not hold the money up for one or two head being sold subject. We have executive or managerial duties to perform such as correspondence to answer. We know our customers, and in the native season I go out through the native country and sort the lambs for the boys. Educational trips are peculiarly necessary because the patrons of the market are not big operators. We go right down in the country and corral these lambs and go through the same performance that you see in this blotter which we had printed last year just to send out to these firms, trying to help them pick out fat sheep and fat lambs. The farmer will go out with us and we will explain to him the lamb that is not quite fat, or the rib is not quite covered, possibly the loin or the joint is very prominent in the loin or the joints of the tail. We will show him how we will judge a lamb when it is fat. That saves them lots of trouble. There is a wide variation between the price of a cull lamb and a fat lamb. You cannot tell how fat the sheep is without handling it. The wool is what deceives the flesh.

Respondents' Exhibits 5 and 6

Whereupon, Respondents exhibits 5 and 6, the same being [fol. 626] a copy of a blotter showing how to judge sheep and a copy of the weekly market letter issued by the witness' firm were received in evidence.

In the fall of the year we have the lambs from the counties in the west, and then in the winter we have what we call the fat season. The range season is in the fall. It is necessary for a man in my business to keep in touch with conditions in the various States from which sheep originate in order to handle the business efficiently and adequately.

It is necessary also to keep in touch with the conditions in the states to which sheep go from this market. We have to keep in touch with men that might want to handle the feeder end of those sheep or the farmers that want the ewes. Climatic conditions affect the crops and pastures in these areas differently each year. It is very important to know these conditions so that we can know what to figure on from a feeding standpoint. It helps us in arriving at our ideas as to what we ought to get for them and in counseling our patrons with reference to the manner in which they should handle and market their sheep. We are in correspondence all the time and attend most of the conventions. We come in contact with men who own sheep in these various territories. I think our advise is of value to them.

A good many sheep are fed in Arkansas Valley of Colorado, and northern Colorado. There are sheep feeding districts at Monta Vista and Delta, Colorado. Sheep are [fol. 627] also fed in Kansas, Nebraska, Missouri, Illinois, Ohio, and New York. The fat lambs which come to this market for slaughter purposes come from Colorado, Kansas, and Oklahoma. There are big sheep feeding yards at Morris, Kansas, and at Prospect, each about ten miles from Kansas City. The sheep that are unloaded at those places have been on the road four or five days, and in some cases six or seven days. They are shrunk out when they arrive at these feed lots. We have to see that they are fed and watered until they are filled. Of course, they have men there that do the work, but we go out and look them over, and sometimes we sort them out there before bringing them to market. As a rule they stay there from two to three days. During the range run we are at both places every day. We do what we think is necessary. As the ewes and lambs are mixed we might sort the ewes off and bring them in by themselves, or bring the lambs in. Sometimes we will even mouth the ewes out there. I think the Prospect Yards have sheds there for 200 cars of sheep, and I guess the Morris Yards are as big, if not bigger. About 200 head of 120-lb. ewes can be loaded in a double deck car. About 250 head of 75 or 100 lb. lambs can be loaded in a double deck car. If sheep arrive after we are through in the yards, any time before six o'clock, we will meet the shipment when it arrives, meet the owners, see the sheep unloaded, and go to the pens with them and look them over.

We will come to town the next day, after they have had a fill, and take the owners out. Then we decide whether we [fol. 628] are going to sort them out there or in Kansas City. If they are filled up good we might order them in for market. Sheep are sheared in those sheds most any time when they are coming to market. We also take wool buyers out and make a trade subject to the owner's approval. We get no fee whatever for that service. The customary commission charge for selling the wool is from 2¢ to 2½¢ a pound. As a rule the shorn animal brings a little less than a wool lamb.

We have two automobiles which we use in our business. We don't charge any part of the expense of the operation of those two automobiles to our business. We could not have gotten along without those automobiles and have done the business efficiently. I do everything I can to keep down expenses. In fact, we have only one office girl, and she is the bookkeeper and stenographer. We do a good bit of the office work ourselves. We have to do a great deal of correspondence in the business. The girl makes out the account sales and Mr. Stover or I will check them over. We figure the tickets with her. Then she makes out the account sale. There are times when we have been real busy and have hired an extra girl for a month or six weeks. It is true of almost all of our operations that they require skilled and experienced men and women. We cannot ordinarily get them when the business suddenly expands.

I expect to attend the convention of the National Wool Growers in Colorado on the 10th, 11th and 12th. The Govern- [fol. 629] ment audit shows salaries, but Mr. Stover and I are not on a salary. It is just a drawing account. It is a very small drawing account, and as far as the expense of the firm goes, the report is not a true copy of our expense. We have not shown the automobile expense for two cars, and we have shown only the drawing account as salary. We do not show the gasoline expense that we use in the automobiles. The general range in values on sheep are subject to constant fluctuation. The fluctuations or differentials between the various grades of sheep within the general range of the market close up or spread out from time to time. We have to keep in contact with those things in order to represent properly our customers.

Cross-examination:

We have lambs of all the breeds shown in Respondents' Exhibit No. 7. We have to classify them. There are very few of some of those breeds that come here. We sell every shipment separate. The kind of a sort which we would make would depend more upon the purchaser than it would upon the factors outlined in Respondents' Exhibit No. 7. This Exhibit indicates the variation in the kinds, breeds, origins, classes, and feeds with reference to sheep and lambs from a standpoint of the general knowledge one needs to have as a sheep salesman, rather than being related to the sorts we have to make in selling sheep.

Respondents' Exhibit No. 7

(Whereupon, Respondents' Exhibit No. 7, the same being [fol. 630] a chart showing the various grades and classes of sheep, was received in evidence.)

Redirect examination:

Our total sales of sheep in 1929 amounted to $1,950,449.44 and the purchases amounted to $241,407.57. We sold 200,177 head and bought 25,991 head. I am afraid that if we had only $1,723 as working capital, the bank would never pay an overdraft. The bank has to pay over drafts in lots of cases. There is invested in our business a net worth in the form of partners' capital of $17,044.03, and we are not over capitalized. If we had only the capital allowed by the Government, namely $1,723, we couldn't do the volume of business we are doing, and probably would have to go out of business. There are months during which we sustain a loss. We carry that over to the better seasons of the year when there is a greater volume of business.

Cross-examination:

The heavier carlot business in sheep is from the middle of August to the first of November. That is the class known as western lambs. The busiest time for drive ins is from May until the first of August. During the range season the shipments arrive at nearby feed lots on Friday or Saturday to give the lambs a chance to fill before putting them on the market. We try to distribute them the next week.

Mr. Stover and I do the selling and together we manage the business. We stay in the yards until the work is done. [fol. 631] It depends on the season of the year and how much business we have, as to the time we get through. In the fall of the year we have the range run, and in the summertime we have so many drive ins, and we do not know that they are coming. Sometimes they don't stop coming until after dinner. Sometimes it is two or three o'clock before we get up to the office. At other times of the year I would say that we get up to the office from twelve to two o'clock, on an average. We are ready to sell either carlots or drive ins when the packers are ready to buy them. Our receipts last year by months were as follows:

	Drive Ins.	Rail Receipts
January	1,296	18,204
February	902	11,338
March	530	12,039
April	495	18,673
May	1,647	18,628
June	3,759	7,380
July	6,204	3,966
August	4,285	14,407
September	2,428	13,155
October	1,811	32,683
November	1,885	12,465
December	1,612	10,458

The blotter and the market letter, shown in Respondents' Exhibits 5 and 6, respectively, are sent to patrons free of charge. They are means of advertising our business. [fol. 632] The main object in sending out the report is to keep our customers informed as to prices and conditions of the lamb market. Our firm has a mailing list for sending out these forms, or circulars. In nine times out of ten they will tell us to keep them posted. We put on our mailing list the name of anyone who has requested this information. We get our list by men asking for the market letter, and by our firm being recommended by our friends. We run ads for the sale of sheep in this paper and sometimes when a sale is made, as a result of these ads, the farmer will pay us a commission. This is called a country commission, and no account sale is made for it. As a rule we charge 10¢ a head for a country sale or purchase.

My partner has an automobile and I have one, which we use in our business. I have a Hupmobile, and my partner has a Chrysler. We have to have five passenger cars, because we have to take so many men out to the feed lots. The record shows that the gas and oil bill and repairs for the year were $509.00 and possible deterioration in my automobile of $850.00. I would say my operating expense of that automobile has been around $1,400 including deterioration, repairs, gas and oil. These automobiles do not belong to the firm, and we do not set up the cost of these cars in our operating expenses. It is just like our salaries, we have just had drawing accounts, figuring that it might pay our automobile expenses and keep things up. At the end of the year I would divide the profit three fifths and two-fifths. I [fol. 633] think my record will show that according to the audit last year I received around $8,000.

Split commission is where a firm turns sheep over to a commission man to sell the sheep for them, and they split the commission. We don't sell many sheep for outside firms. We would rather not have that kind of business. The firm to which the sheep are consigned gets the regular commission from the owner, and they pay us half of that commission. We sell for Theis and for Gladish. Somebody at one end or the other is losing money on split commissions. Some firm will turn it over to me, and all I do is sell it. I have no responsibility in the case of remitting more money, making a mistake in the remittance, and you have no chance of selling the mortgaged sheep, no responsibility in that regard. If the sheep company handled its customer's business the way it should be handled, and advised with the customer and helped him, he would lose money on half commissions. Whoever the man is who has handled that business properly and pays the expense of going and of advising with the customer, sorting livestock, and doing that kind of work, he is losing money if he is getting only half. If somebody would take my business and pay all my expenses and just let me sell on the yards, I would not have any telephone or telegraph bills, or postage, and I would not have taken any trips to the country. I would say I could make some money, because I think my expenses are three quarters, maybe more than that, of the commissions. [fol. 634] I mentioned a transaction with one Joe Kerr. I wrote him and told him I was sorry the draft got there

before the bank closed, and I sent him a note to sign and a mortgage. I will carry the note myself, but I told him that if he could get the money right back to us, I would not charge him any interest from the time the shipment was purchased until he got the money to us. Now, whether or not that will stand, I do not know. I am just trying to get my money. I hope to know in a day or two what he is going to do, but as it stands now the bank has informed me what they have done, and that I am a creditor of the bank. I also described a transaction on some sheep for a man named Watson, involving the Intermediate Credit Bank. We were sued, but that case has been dismissed. I can not think of any losses which our firm has suffered or money which we have had to pay out by reason of stolen or mortgaged livestock, or any other livestock of which the title was not as it should be. If there is any loss in connection with the remittance of proceeds after they have been deposited for the credit of the shipper, we recognize whatever liability the law imposes on us. We have suffered loss from the remittance of proceeds. We had one case this summer sometimes. By some mistake we weighed up four head in a drive in consignment along with another shipment that belonged to someone else. That gentleman took the ticket up to the office and the girl paid him. That evening we were checking up from the drive in slips and the girl saw that she had given him money for twelve head instead of eight. The Yard Company checked over its [fol. 635] books and found that one commission company was four head short and we were four head over. I told the commission firm that I would pay them for the four head average of our shipment and put the price on it that our sheep brought. They were not satisfied and we went to an arbitration. This arbitration committee decided that I should pay for the four head average weight, but their price. We advised our customer about it, and his brother was in the office and said that he only brought eight head in for his brother, and that he would send us the money on the basis of the price he got and the average weight. He hasn't brought it in to date. In another case the girl made a mistake and made a check out for $50.00 instead of fifty cents. We never got that back. There are other hazards than those that we have mentioned. We used to finance a lot of feeders. One man went broke, took bank-

ruptcy, and it cost us $45,000. During the bad years of 1920 and 1921, I would say that our outfit lost between $50,000 and $100,000. That was practically all in the loan business.

If twice as many sheep came to us, and they came in just the same way that they have come, that is the same proportions of different kinds, and classes, and types, and grades, and breeds, from the same sources, and so on, I do not know that it would be necessary to hire another salesman, but we would certainly have to rearrange our business. We would have to have some men at some end of the line. The chances are that Mr. Stover and I would sell them, but as it is we help sort them every day. Sometimes it may be perhaps our yardman would be over mouthing [fol. 636] sheep, or he might be billing, or he might be sorting the wethers from the ewes. Maybe Mr. Stover would be sorting another bunch. If we had twice as much, the chances are that we would do our selling just the same, but we would necessarily have to hire more men in the yards. The chances are that we would have to hire more people in the office, because that would take us away from our office if we had just twice as much under those conditions.

As to how many carloads or head of sheep a salesman can handle efficiently in an ordinary year, I can answer that, "how many lawsuits can a lawyer try in a year?" There are a thousand things that would enter into it. Some days we work all day on a load. Some days we would sell ten easier than we could sell one. There is no way of getting at that question at all as I can see.

Redirect examination:

I have never rechecked the audit, but I presume it was correct. We try to employ to the best benefit of the business and in as economical a way as possible, all working capital that we have in the business. We use the established credit which I and my partner have individually.

We have got to have more money at the peak, and we arrange to have more money. If we need more money we take some of our notes over to the bank and borrow on them and put it to our account. As soon as we get through with the peak movements, we take up the notes. I think that we could not cut the expense of doing business in any way

[fol. 637] possible. I think we have got it right down to the minimum right now. I have not had a vacation since I have been in the yards. I even work Sunday. There have been times when we have been busy and spent all the day in the feed lots sorting sheep.

I believe more advertising would help. Specialties and novelties amounting to $741 during the year went to our customers. Most every customer who comes in wants to know if we have got a book and a pencil. That has been customary in the business for years. Our total for rent was $588, less rent from subtenant of $384. I consider that low. An item of $112.17 for mortgage and theft insurance is paid to the Hartford Insurance Company. That policy contains a clause that the company will only be liable in the event we hav- used due diligence with respect to the particular transaction out of which the alleged loss arises. We try to use that degree of care.

The figures which I have in regard to the number of head handled do not agree exactly with the figures shown on the audit. I asked her the other day if she had ever rechecked this audit, and she said no. There are lots of times when I, as a salesman, do not have as much time as I would like to have to put in on sheep here and in Prospect and Morris feed yards. I think it is an advantage to the Kansas City market to have these feed yards. It saves the owners of those sheep a good deal of money, and we get a chance to advise with them in regard to handling them. Sometimes, if they would come right in, they would have [fol. 638] to sell as feeders, where a few weeks' feed would make them good. When wool is selling high and there is a good market, sometimes the shearing of the sheep will make a man a dollar a head or more. If they would come right straight in, we would not have that. We make no extra charge for the sale of wool. We could not handle more sheep than we have handled without having extra expense. As it is, at peak movements we sometimes hire men to help us sort the sheep. Mr. Stover and I sell all the car lots and sometiemes our yardman will sell some of the drive ins. The efficiency of the sales, to some extent at least, depends upon the amount of time we give to it in the examination of the sheep. It is not in the interest of the customer to sacrifice any part of that efficiency.

Recross examination:

It looks logical to me that if the packer is going to buy direct he is going to make some money by it. There are days when we have to work longer and harder.

When the partners retired from our business we did not pay them anything for good will, but we paid their losses. I do not know the difference between good will and going value. The satisfied part of it is more than the friendship. He might be a good friend. We would have friendly feeling but if he did not think we could get the price for the sheep, we would not get the sheep to sell. The satisfied part of it is the very thing that will build up the business. In the [fol. 639] case I mentioned this morning when the customer got the weights on those lambs he knew that we had taken care of them. He turns right around and tells us to write to another man, his neighbor, to whom he has recommended us, and that is what builds up any commission business.

I do not aim to keep eno-gh money in the business to make loans at all. I keep enough in there to run the commission business. I regard all the money in the business as necessary to run the commission business even if we made no loans.

Redirect examination:

We have a family car besides the automobile that I use in the business. In the last four or five years I have not accumulated any surplus out of this business outside of my actual living expenses. We live in a very common way. I have one daughter that is away at school.

Whereupon the witness was excused.

Charles H. Haren, a witness called by the Respondents, after being duly sworn testified as follows:

I am a sheep salesman for John Clay & Company at the Kansas City market. I went into the employ of Clay-Robinson and Company in 1905, as a yardman in the sheep department. I was a yardman for a number of years and during that period I started out by selling a few crippled sheep in small bunches. It developed where I was selling the native sheep, and finally became what may be termed

a full fledged salesman. In 1918 the head salesman died [fol. 640] and I took his place. In 1922 one of the partners of the firm of Clay-Robinson and Company retired from the business and the other parties continued the business under the name of John Clay and Company, and I have been with them since that time. I think the records will show that we have handled larger volumes of sheep than any of the other firms at this market. I started to work at the stockyards in 1896, and I had been actively identified with the business at the yards from that time until I went into the employ of Clay-Robinson and Company. I started in as a messenger boy for the Stockyards Company in 1896. Among my other duties was to carry bills and other papers between different points of the yards and in doing that I became familiar with the general layout of the yards. After a year or so I was promoted into the office of the Stockyards Company and part of my duties there were to write up waybills that the railroad company delivered with each car of stock. In that way I familiarized myself with the general business of receiving stock at the Kansas City Stockyards. Later in my experience with the Stockyards Company I was a weighmaster and was finally located permanently as a weighmaster in the sheep house. I spent several years at that. While I was there I observed as much as I could about the handling of sheep on the market. I familiarized myself with the different classes of sheep. Most of the salesmen in the yards start in as boys in the same class of work that I was doing. When I started in with John Clay in 1905, I was 26 years of age, [fol. 641] but I was a boy in experience as far as the sheep business was concerned. I worked under a man who was quite a task master. I found that experience and that training under him very valuable in my later life. I started in on the 6th of July, and I had an opportunity to work along that summer until the runs became heavier in the fall, and I was pretty well hardened up, and the hours were long and the work was hard. One of my first duties was to go to the train office at the yards where the bills are posted and the receipts, shipments are received during the night, to see if we had any shipments in. If there were any at the chutes, it was my duty to go to the chutes and get them, with the aid of the stockyards company's employees, and take them to the sheep house. If there were not any at the

chutes I went over to the sheep house and found what was in during the night. Those sheep all had to be watered and sorted, that is, a good portion of them had to be sorted with the assistance and help of this salesman, I gradually acquired a knowledge which was necessary to allow me to sort properly those sheep. After I had sorted them as I thought best, the salesman would help me to sort them further, if they needed to be, before they were properly shaped up to show the buyer. After they were sorted they were all watered I would help the salesman by going around with him and opening the gates and getting the sheep up on their feet for the inspection of the buyer. After they were sold; if they needed additional sorting, I did that. I assisted the packers' sorters in sorting them up. After [fol. 642] they were ready for the scales I took them to the scales and weighed them in the usual way. After they were weighed I would secure the tickets and mark the prices which the salesman had previously told me was the price on the ticket. I took the ticket back to the salesman for verification, had it O.K.'d by the packer buyer, and eventually I would take the ticket to the house. Frequently it was necessary to carry sheep over from day to day, and it was necessary to feed them. Among my other duties it was necessary to see that the sheep were properly fed, watered again, and sometimes the sheep would be brought over by the stockyards and delivered to us. Among my other duties were to keep a check on the number of head received and the number weighed, and to see that they corresponded. In the sorting of sheep there were a number of different kinds to arrive, which would have to be sorted before they were ready to show. They had to be sorted for different ages and classifications. In the case of lambs, if they were range lambs, it might be advisable to sort off the feeder lambs before showing the fat lambs to the packers. In the case of ewes, it was necessary before they could be properly sorted to determine their age by looking at their teeth. After we had marked all of them, the salesman and myself, or as it developed later when we had an additional helper, one of us would drive those sheep through a sorting chute. Wethers were classified and sorted in the same way. As a sorter I had to know the classification in which those different lots of sheep were to sell. Con- [fol. 643] siderable portion of my time was taken up as a

yardman in checking these counts that I mentioned a while ago. A great many shipments contained plural ownership. In that case it was necessary to sort each individual owner's sheep out to themselves before sorting them to show to the buyers. In weighing sheep belonging to different owners the same care was taken as in the case of one owner, keeping each separate owner's sheep in one lot. After I had been working as a yardman for a while, the salesman let me sell a few odd head under his careful direction. He wanted to see that I got their approximate value on the market. Later I did sell native sheep and he sold the Westerners. I sold a part of the feeders in the fall and bought feeders. It was not an uncommon occurrence to get to the yard at 6 o'clock in the morning and work until 12 o'clock at night during the busy season. Frequently we were so busy that I could not get away at lunch. Quite often at night we wait- until after dark to get the sheep weighed up before we finished the day's billings. Most of the time we were so busy that we would not have time to stop and take these counts until we were all finished. That work was done before we left the sheep house, before we turned the tickets into the office. Since I have been the head of the sheep department at John Clay and Company, we have another salesman who now does the work comparable to what I did under the former head salesman. He sells the native sheep. He sells part of the feeders, buys feeders, and when business necessitates my being [fol. 644] away from the market he sells the other sheep also. This man who sells the natives sells most of the drive in shipments. We also have a yardman who has been with us a considerable time, who is getting to a point where he can sell some drive ins, and all of us more or less still do considerable yard work in helping each other get the sheep sorted and getting them to the scales. Sheep differ from cattle and hogs and have to be handled to determine the degree of fatness. In some cases it is not necessary to handle more than a portion of them, and it is always necessary to handle a good per cent of the shipments. In the case of small loads, such as truck in consignments, we handle practically every lamb in the shipment to determine how fat it is. In connection with my duty as sheep salesman, I have other duties which take me away from the yards. I attend to all the correspondence my firm has in

connection with the sheep business. I am called upon frequently to go to the nearby feed lots, either with shippers or at their request when they are not here to inspect their consignments which are located at those yards before they are put on the market. I am called upon both by letter and telephone for advice in regard to sheep which customers may have. I am called upon to go into the country and see the sheep and consult with the owners about them. It is necessary for the conduct of the business that I keep myself as well informed as to the conditions in the country over the area from which sheep are shipped to this market. In 1929 there were sheep received at this market [fol. 645] from 21 different states. The classes of sheep received from some of these different states vary greatly. That I keep informed on these conditions it is necessary for me to travel over a considerable extent of this area I meet the shippers or owners of the sheep. I attend meetings and conventions where I know they will be. I am called upon by telephone frequently at night after I have gone home. I have to hold myself in readiness at all times to be able to give advice. All of our business cannot be transacted on the six usual working days of the week. There is not a Sunday that I am not in Kansas City that I do not go to the stockyards during the morning and either stay there until noon or go out to one of the nearby railroad feed lots. Legal holidays are the same way. The first five days of the week I reach the office in the Exchange Building at approximately 7 o'clock every morning. There are very few days even in the lightest time of the year that I leave the office before 5 o'clock in the afternoon. During the busy season of the year I very seldom get away from the office before 6:30 or 7 o'clock. On Sunday I may be detained at one of the feed yards so that I cannot make both of them in the morning. In that case I have to go back in the afternoon. It is not an uncommon occurrence for me to leave home on Sunday morning in the fall of the year at 6 o'clock and not return until 6 in the evening. On Saturday I usually get down to the office about 8 o'clock in the morning. These country trips are made at the season of the year when we are not quite so busy [fol. 646] in the yards. I have several regular trips that I have been taking for a number of years. Usually in March I go to Arizona, New Mexico, and some years California.

About the middle of June I usually go to Utah and Western Colorado. Usually in the latter part of November and into December I go to Arkansas Valley and the San Luis Valley in Colorado. There are other short trips that are made as necessity arises, for which there is no definite time set. If those trips are made during the busy time of year, they are usually made Friday or Saturday. I am positive that these trips are of advantage to me as a salesman because *it* give me information which is of benefit to the customers. It is necessary that the salesman know the various classes of sheep and the districts from which they came, and it is necessary that he know the conditions existing in the particular sections from which they come each year. Recently I made a trip to the San Luis Valley in Colorado, which is a feeding section, and ascertained the number of lambs each feeder had in that section. After I had finished I wrote the newspaper and to the banks giving the information showing the number on feed compared with the number on feed the year before. I have had inquiries from other sections of the feeding country inquiring as to the number of lambs on feed in the section where I was. The reason for that is that the number of lambs on feed in the various sections and the time of year that they will be ready for market, has a very direct bearing on what feeders in other sections of the country may do, and how they [fol. 647] may finish their lambs so as to have them on a favorable market and not get them all here at the same time. In one particular case after the man had obtained this information he changed his entire plan of feeding his particular bunch of lambs so as to have them in for a particular market. I see published reports from the Department of Agriculture which give the totals from the various sections.

Respondents' Exhibit No. 7 was prepared under my direction. It represents the various classes of lambs, wethers, rams and ewes that come to this market, with the exception of ewes. There are more classifications of ewes than are shown on this exhibit. There should be four year old ewes, good solid mouth ewes, short solid mouth ewes, and spread mouth ewes. All the factors and conditions mentioned on this sheet have a bearing upon the value of the sheep that reach this market. There are a great many various classes of sheep and lambs. There is no mention

here of goats, and the sheep salesmen sell the goats, and while there are not as many classifications as there are of sheep as to breeds, there are as many classifications in regard to sex and age. Every item on here is a determining factor in the price and the value of sheep, not only the age and whether or not they are shorn or unshorn, but the section of the country from which they come. It is a fact that they come from different states and different sections of the United States where the climatic conditions are very different. They range all the way from the extremely hot [fol. 648] Imperial Valley in California to the high mountains in Utah and Colorado and other sections of the Northwest. It is a climate that will vary greatly from year to year.

There are a number of competitive influences affecting our business in the marketing of sheep. They are the influence of other markets, the influence of competition among firms upon this market, the activities of the packers in buying the sheep away from the market, and the activities of the cooperative agencies which secure funds from a source, which are not available to us.

We do some work on the Morris and Prospect Feed Yards with respect to the consignments of sheep which come to our firm. Since the establishment of these yards close to the market, it has become customary for the owners to bill their shipments so that they will make their last unloading and feeding at those yards. The purpose of that is that the sheep can be rested and filled before being put on the market and can be better distributed from these points than as though they came directly into the market. A great many of our sheep come great distances and it is necessary that they be unloaded one or more times en route before they reach the market. The owners may or may not accompany their sheep to market. In the cases where they do come with them, after the sheep are at these yards they want our opinion and judgment as to how they are filling, whether they are properly fed, whether they should be sorted out at the feed yards before being put on the market, [fol. 649] and how long they should be held there. In case the owners do not come with the-, they may notify us or they may not that the shipment is en route. They know from past experience that we will see those sheep there and will determine all the things in connection with their

marketing, whether they are with the consignment or whether they stay at home. The location of those yards is very advantageous to the owner who sends the sheep, and no additional charge is made for our services.

Whatever work we do out there must be compensated for in the commission charge which we collect for selling the sheep upon the Kansas City market. Frequently the sheep are shorn out there and we have supervision of that. We make no additional charge for selling wool. The Producers Commission Company, a cooperative agency, also sells sheep on the Kansas City market. I am more or less familiar with the Government Farm Board's set up with reference to the handling of wool. It is the National Wool Marketing Association. Private commission firms who handle wool exclusively charge 2¢ per pound for selling it. The Government Farm Board Wool Marketing Agency in this territory is charging 4.2¢ per pound. Wool at present ranges around 18 to 20 cents per pound, so that 4.2¢ would be in the neighborhood of 20 to 25 per cent of the value of the wool. I understand the price is the same regardless of the quality or value of the wool, and not all of the wool is worth 20¢ at present. The Government took charge of the sale of wool during the war time. The rate allowed to dealers at that time for the handling of it was 5% on the [fol. 650] valuation of the wool.

I am not an owner in the firm of John Clay and Company. I spoke of the cooperative agency financed by the Farm Board having the use of Government funds that were not available to us. That interferes very materially with our business, due to the fact that sheep men securing loans through that agency are compelled when they secure the loan to agree to sell their livestock through an organization at one of the terminal markets connected with this association. It is my understanding that under the Agricultural Marketing Act, the basic interest rate for such loans is the lowest rate of interest at which the Government can at the time float its own obligations and to that is added the expense of financing. That makes the rate less than that at which my firm is able to loan money. My firm has conducted a considerable loan business. It has been done with the idea of assisting the commission business and increasing that part of the business. It has assisted in the obtaining or the retention of business. There was a great

deal of loss during the deflation period in 1920 and 1921. The executive management of our firm is in Chicago and John Clay is the head of it. He has been engaged in the livestock business since 1886.

The executive manager of the organization here at Kansas City, Missouri, is James Reid. I would estimate that he has been engaged in the livestock commission business from 30 to 35 years. A very large part of our work is in [fol. 651] the way of counseling and advising with customers concerning their problem in the growing and feeding of sheep.

Drive ins that come in to the market by truck take considerably more time to handle and use up more time of the salesmen and the yardmen as well as the office force.

I have seen the value of the sheep fluctuate more in one day than the amount of our commissions reduced to a per head basis as shown by the 1929 audit, amounting to only 8.43¢ per head handled.

On the present market, about the greatest spread that I can think of between the various grades and classifications of sheep, from the least valuable to the most valuable, is $7.75 per hundred weight. When sheep are selling up around 21 or 22 cents per pound, the spread would naturally increase.

I am a director of the Kansas City Livestock Exchange and a member of the bond committee. I think our methods of remitting proceeds through deposits made immediately upon the day of sale with the correspondent bank of the country bank with which the shipper does business, expedites the handling of the customer's business both as to the time that he receives a credit for the money and the safeguards which are thrown around it by the present method. It tends to establish and maintain the integrity of the market from a financial standpoint. It eliminates the float entirely. My experience as a member of the Board of Directors and a member of the bond committee has shown to me that it is a helpful factor in maintaining the generally low [fol. 652] premium rates on surety bonds on market agencies here.

The yardmen employed now perform practically the same duties that I performed when I was growing up in the business except that there is more sorting to be done now. We do not get as many straight consignments as we

did in those days. Three men work exclusively in the sheep department for our firm here at this market. The general office force do the work that is connected with getting out the account sales and do the stenographic work in connection with writing our letters. I have information in regard to the direct buying of sheep by packers in the country.

In addition to this the packers buy a great many lambs on the range, particularly in the west, from territory that is tributary to this market. I made some inquiry about a month ago in regard to that from different sources and I have some letters here containing that information. That information is valuable to me for the same reason that I mentioned in connection with the lambs that the packers feed. It has been my observation that when these lambs are shipped to the market, it reduces their needs to that extent, and it is a factor which we have to use in determining the probable trend of the market so that we can advise our customers. It gives the packers an advantage over the salesman that he would not otherwise have, because these packers are well informed as to what the receipts are on the different markets each day and they know naturally [fol. 653] what proportion of those receipts actually belong to them at the time. They alone know when they are going to move these lambs into the packing houses for slaughter. It has a great effect upon the peaks and valleys of the open market receipts. When they are operating in the country, it has the effect of curtailing the receipts at the market and when they are not operating, those shipments are moved to the market and there is no way for us to prejudge what their activities may be. It has a tendency to increase our unit costs of operation very materially. The method tends to forestall the requirements of these packers indulging in it for their local plant operations. (Witness reads into the record a number of letters received from the other branch houses of his firm relative to the feeding and movement of sheep for packers.) It is impossible to determine what proportion of these operations represent sheep bought on the public markets. The only letter that mentioned that was the one from Chicago, and I presume their figures include lambs which are bought possibly on the other markets as well as the lambs which were shipped direct from Ogden. The packers do buy some fat lambs on the Denver market

and ship them East alive, and they do buy some feeder lambs on that market. They do sometimes here at this market.

All the sheep or lambs that pass through the Ogden gateway coming East originate in the country. There is no market from which they could be forwarded. I might add also that that applies to the figures given from Denver. [fol. 654] Those shipments in there are from country points. There is nothing to prevent any of the packers from purchasing their requirements direct from the country. To the extent to which they do it, it may either shrink or expand the volume of our operations on the public market. We have found that it is absolutely necessary for our organization to be ready to handle the big demand upon our services as well as the diminished demand when the packer buys his livestock again in the country. I know that some lambs bought by packers at western points are based on the prices at Kansas City.

I attend conventions of sheep men and wool growers for the purpose of giving us an opportunity of meeting a large number of men who are customers or prospective customers and who want to know conditions in respect to the market. They want to know what we have learned about conditions in other parts of the country and to be advised about their problems in the sheep business. I think I am safe in saying that I have not attended a convention in the last year in which there has not been a member of the Farm Board, or at least one, and usually more, representatives of the Farm Board. They have been preaching the gospel of cooperative marketing both in wool and livestock. The representatives of the various market agencies also attend those conventions. These conventions are valuable to the producers and the market agencies.

Cross-examination:

I have a large range of duties to perform in connection with my operations as a salesman for John Clay and Com- [fol. 655] pany. I put in the major portion of my time as a salesman. I am on the market most of the time. I am not financially interested in John Clay and Company and have no share in the business. During the time I was with this company, growing up in the business, I received a regular wage or salary. When I went to work for them I took

what they offered me for work. I was always aiming to be as valuable as I could and to get as much as I could for my services. When I first started out, the salesmen helped me sort and later additions were made to the force and I had other yardmen who helped me. In the case of those sheep sold by our yardmen, I might tell him in some instances what I think the sheep are worth, and in other cases he might go ahead on his own initiative and then consult with me after he has been bid on the sheep. I look at the sheep and talk with him before I turn him loose to sell, but I don't want to give the impression that he sells any considerable number of them. They are just in small lots. It is not confined to the truck business entirely. Occasionally he sells an odd head out of the load lots. He sells a very negligible percentage. My assistant sheep salesman goes to the country some. He is not away from the market much of the time doing country work. He makes possibly one or two trips a year a week or ten days at a time, and he occasionally goes out over the week end as it may be necessary. In the summer I am sometimes away three to four weeks during the light time of the year. I have never figured up how long I have been away altogether from the market dur- [fol. 656] ing the year. I make three regular trips as a rule.

The assistant sheep salesman went to work in 1918 and worked as a yardman for two or three years. He went to Chicago and was with the firm there in the sheep yards for several years and then he came back here to work. He exercises his own judgment in regard to the price which he will ask for the sheep which he sells. He handles part of the correspondence, that part of it in connection with the sales which he makes and in connection with the feeder buying. I would say that in so far as they go, his duties are just as responsible and just as important as mine. I sell a larger proportion of the sheep than he does, because we receive more western sheep than we do natives. I do not know how much more I sell in a year's time than he does. I would not say that that is the only difference. If there are any questions that come up in connection with the sheep business whatever and don't particularly pertain to his duties, I am the one that decides them. I usually talk with the shippers about their problems. He does discuss shippers' problems with them. When he runs up against some-

thing especially difficult, he calls on me. When he is away I sell all of the sheep. While he was in Chicago I had someone else who had the same position that he has now. I sell all the sheep at the time when he is away from the market. He takes a ten day vacation. His trips in the country are not considered vacations. He takes his vacation usually during the light run in the summer time.

I do not know how many sheep I could sell in a year, or how many I do sell in a year. It would be impossible to [fol. 657] determine that from the records. I have never had occasion to make a study of it. The record is not kept separately of what he sells and of what I sell. I would not think that the number of sheep that a salesman can handle is a factor in considering the value of the salesman to his firm. The chief qualifications of a salesman are his honesty, his knowledge of sheep, his knowledge of the demand on the market both at this point and at other markets and in the country, his ability to judge the weight of sheep, and the natural trading aptitude that he must have.

As head salesman I have had something to do with making recommendations as to the employment of salesmen. He will handle whatever volume there is to handle if he has the qualifications which I mentioned. The owner determines the volume of business that a salesman may handle. I make no recommendations in respect to that. I have nothing to do with the determination of the amount of salary paid the assistant salesman. The volume would not be a factor if I were hiring a sheep salesman. We would hire him for his ability and depend upon him selling the volume that came in to the firm. I would hire a salesman whom I thought was competent to handle whatever volume of business I might have. I would not hire a man under any circumstances if I did not expect to have something for him to do. If I hired a man and he did not do as much as I thought he should do and did not do enough to earn his salary, I would not keep him. The business would not justify keeping a man if we did not have enough business to pay him. Not having been in the commission business as [fol. 658] an owner, I do not know how much business a salesman ought to handle to justify having him.

I do not know the largest number of sheep handled on any day during the past year by me. The largest number of cars of sheep which were received during any day was

between 35 and 40 cars. I do not recall whether they were all sold the same day. I do not know how many I sold, or how many of them were Westerners. If they were all sold the same day, my partner and I sold them. I have seen days this fall when it would not have been possible to have sold them. I have seen other days when it would have been depending upon the conditions of the market. As a rule we don't carry over many sheep from one day to another. We have carried them over in considerable number. It is exceptional, for the reason that we attempt to regulate that as much as possible through these various feed lots. We can order the sheep in on the market as we think advantageous. If in our opinion it is to the owner's advantage to hold part of those sheep at the feed lot for a longer period than we would under ordinary conditions, we will do so. In regard to truck-in shipments, we handle practically every sheep consigned to us. What I mean by handling is that there is a certain portion of a sheep's body which we feel to determine the amount of fat that the animal carries. That handling is done mostly on the back, just back of the forequarters.

If the buyer and seller agree on the number, the sorter [fol. 659] for the packer as a rule marks the lambs which are to come out, and the seller advises his yardman what that number is and sees that that is the number which does come out. The real job of sorting is left mostly to the representative of the packer and our yardman. Usually all of the time that I have left after selling the sheep and going to these adjacent feed lots is spent in the office with correspondence. If we have a comparatively light run and the market is active, we frequently are sold out by noon. During the heavy periods of the year we frequently do not get sold out until five or six o'clock. I could not tell definitely how many hours I spent at the feed lots during the last year or the last month.

I have sorted in the country quite frequently. I acquire a great deal of information from these people. It is a sort of a mutual helpfulness. They give us details of how they handle and feed their sheep. The firm gets the benefit of the information that I acquire in handling the business to prepare me to handle properly their business. These contacts frequently attract business to the firm.

When I speak of competition of other markets I mean

that all these markets have representatives out soliciting business for their particular market. That comes from all of the markets east of St. Louis and Chicago. St. Louis and Chicago solicit and endeavor to get consignments out of the fat territory. The amount of business which we get [fol. 660] out of this competitive territory varies from year to year. It may be that some of the other markets have been a little more competitive in their solicitations some years than others. The matter of solicitation is a pretty big factor on the part of the Stockyards Companies. They try to persuade the shipper that their market is the one to which he should send his livestock. The chief factors that influence a shipper to ship to Kansas City rather than to some of the other markets is the condition of the market and his information as to where he can get the best price for his livestock. He has some information on which he may form an opinion. Competition from other firms on this market takes the form of the exercise of every means at their command to satisfy their shipper. The most effective way to satisfy him is the price he secures for his livestock. I meet representatives from other firms from the Kansas City market when I go out on these trips. Some of them go around and see the same people that I do. I presume their purpose is the same as mine, which is to get what information they can, and get what business they can.

The feed yards is an advantage to us as it is an advantage to the shipper that we can better serve his interest. There is no advantage to the commission firm except that it affects the market from the standpoint of price. When we order a shipment out of the feed lot, it is entirely our consideration is governed by the interests of the shipper and not our own interest. I cannot think of any advantages that there are to the commission firm as [fol. 661] far as operations are concerned. If a large consignment were thrown on the market all at once instead of being eased into the yard over a two or three day period, it would affect the market to the extent that it would hamper our operations. We receive a great many consignments containing several carloads belonging to one owner. I don't think during the past year that we have received a consignment of over 8 cars of double decks belonging to one owner. They were mixed fat and feeder lambs. I sold all of those myself.

I do not know what percentage of the sheep in this country is fed by packers. I think the number that Cudahy has out on feed this fall bears a very important relationship to the receipts at this market during that time. That operation affects the cost of operation of the commission business because it lessens the volume of our business from these sheep that might be fed by individuals and shipped back to the market. I think that the sheep that are bought direct on the range by the packers are more of a factor because they are in large number. I was able to handle conveniently the 8 double decks which I sold one day this year.

Recross-examination:

Supply and demand make a market. The more buyers we have, the more active our market. It would depend entirely upon the needs and wants of the buyers whether we would be in a stronger bargaining position, if we had a [fol. 662] fairly good percentage of the sheep that come to this market on any particular day.

Redirect examination:

On my last trip I met a man who is feeding some 10,000 lambs, and he has a loan at the present time from a finance firm here in town, but had made application for a Government loan through their recognized outlet for these loans. He said that the time was growing short and if he did not get the money pretty soon he might not take it, to save the 2 per cent that he would save, and that if he did not get it, he would let me sell the sheep, but that if he did get it he was compelled under his contract to ship them to one of the representatives of the National Livestock Marketing Association.

Recross-examination:

That is the only particular example in regard to sheep that I know about from my own experience.

Whereupon the witness was excused.

WALTER A. LANDIS, a witness called by Respondents, after being duly sworn, testified as follows:

I am a farmer and feeder living at St. Joseph, Mo. My farm is about 3½ miles from the stockyards at St. Joseph. It is about 65 miles by rail and 50 by truck from Kansas City. I have business with respect to the selling or purchasing of livestock both at Kansas City and St. Joe. I am here at Kansas City to buy some feeding cattle. I bought one load [fol. 663] and I wanted three. I had a commission firm buy them for me. I would not buy them for myself. I understand the charge is $15. We started out about 9:30 this morning and got in at quarter to one. I consider the charge of $15 a car very reasonable, because I think the knowledge of the man who bought the cattle for me was enough better than mine that I saved a good many times the commission, to say nothing of the work. I have sold a few loads in Kansas City and quite a few in St. Joe. I have always shipped by rail to Kansas City. I determine which market of the two I will patronize by getting an appraisement from each market. I usually get the representative of my commission firm here to look at the cattle and my commission firm in St. Joe to look at the cattle, and whichever market shows the better demand for my kind of cattle I use that market. It is my experience that the demand as expressed in price varies upon these markets as between the different grades and qualities of cattle from day to day. I don't feel myself competent to keep in touch with these changes. The market may be quoted 50¢ lower on steers while my particular class of steers, in so far as there was a surplus in number and lack of demand would sell a dollar lower, and the radio or the market reporter agencies would not fully explain that point. I believe it has made me quite a good deal of money to have a representative of these commission firms appraise the cattle immediately before shipment. I feel that the competition between agencies in the services is of great advantage to me. [fol. 664] The more anxious a fellow is for your business, the more he will do for you, and the more he will do for you the better posted he keeps you, and the better posted he keeps you the better chance you have got of getting it. That is really the reason I want two fellows there to check upon each other, and to keep me posted. Each one knows that the other is there for my shipment. As a shipper of livestock I hope that situation will continue to prevail.

From the standpoint of the producer, the more market

agencies compete with one another at these two markets, the better for him. Whether the situation would be an advantage to the market agencies, that is their business. I would not hesitate at all on the commissions when I get the services. A nickel a hundred on a load of cattle will more than pay any commission. I don't think it is particularly advantageous to market agencies to have competition on these markets, but it certainly is to the country. The competition is pretty keen between St. Joseph and Kansas City in the 50 or 60 mile stretch of territory between them. I ship to the market where I will be able to get the best price. An increase or decrease of 10 or 15 per cent in the commission charges would not influence me as to the market to which I would consign my livestock.

[fol. 665] The appraisal service is one of the most important features in connection with the entire service rendered.

Cross-examination:

I operate a 160 acre farm. I have been operating it for ten years. Sometimes I feed heifers, sometimes mature steers, and sometimes cow stuff. I have not been shipping hogs to the stockyards for a couple of years. I ship sheep only to St. Joe. I did not buy any cattle on the St. Joseph market in 1929. I sold 9 carloads of cattle during 1930. In 1929 I bought two cars on the St. Joe market, and the rest of them here at Kansas City, but I marketed four cars on the St. Joe market and three cars here. In 1930 I bought 7 cars at Kansas City and sold 9 at the St. Joe market. I sold no sheep at St. Joe in 1929, but I sold 25 head in 1930.

I was in the livestock commission business at St. Joe until January 1, 1927. I was a part owner in the Great Western Livestock Commission Company. It is not in existence now, and I am not interested in any commission firm now. I was in the commission business from 1919 to 1927. Last September I was here and bought 5 loads. We were practically all of one day and a half of the next making the purchase. The buyer was with me all the time. Another man was with me at the time who was looking for a different class of cattle. I would not say that was the average time required, but it is very often that long.

I would not object if the commissions were twice what [fol. 666] they are now, if I felt that I was making money

by paying them. If I felt that what I would save by employing a commission firm was more than I paid him, that is all I am concerned with. That is what I mean when I say I think the buying and selling commissions are both reasonable. Sometimes I cannot get just the kind of cattle on the St. Joe market that I want, and sometimes I can get a better price on the Kansas City market, in view of the quantity that is here. My selling and buying are done by the so called old line firms. I used different firms. My business is practically confined to two firms on each market. I have two firms instead of one because it is a proposition of competition. If I split my business I will get better service. I have the opinion of two men on the grade of those cattle and on their value before they are shipped to market. Very often I have two men come out and look at them from each market. For the past three years I have made it an invariable rule before I ship to have a man come from each market and appraise my cattle, and sometimes I have two men from each market. I regard that appraisal service as very much worth while to me. I don't think all shippers have that done before they ship. It is not of any value to the man who does not take advantage of it. I would have no objection to paying a separate charge for that service, if the charges *is* not too great in addition to the present charges, compared with what I figure the results would be.

I do not know how much it costs a commission man at [fol. 667] Kansas City to sell a car of my cattle, or how much it costs to buy a car. I expect it would cost some firms more and some firms less than $15 a car. When I speak of the rates being reasonable I have reference to what the service is worth to me. Lots of times commission men will know that I have cattle on hand, and I presume wanting my business they will come out and look at them without any invitation. They very seldom tell me what to ship. It takes a commission man anywhere from an hour to two hours to appraise anywhere from 2 to 5 carloads of cattle on my farm. Don't understand me to say that it would take a man an hour and a half to make up his mind what a load of cattle would bring, but ordinarily they are on the farm about that time. The weight of the cattle which I sell varies. I sold my cattle this year when they weighed 1,125 pounds. I ship 20 and 22 in a car. I have shipped

them as low as 800 pounds. I have shipped heifers weighing as much as 625 pounds. Ordinarily they would run about 38 to 42 in a 40 ft. car. The 800 pound cattle would run from 30 to 34 in a car.

I was engaged in farming before I was in the commission business. I was the office manager. I did not sell any livestock. I don't want to borrow money from any commission house.

Redirect examination:

No representative of the Cooperative Association known as the Producers Commission Association has solicited my [fol. 668] business. Assuming that the Producers Commission Association gets money through the Farm Board to loan on livestock, and in making the loans it is required that every person to whom money is loaned on livestock sign an agreement to consign that livestock only to that one particular firm, I would not consider that good business from the standpoint of the shipper because I would want to feel perfectly free to market my cattle when, where, and through the agency that I thought would make me the most money. I would think that the commission firm does a great deal more to increase the producer's net income through their earnings of the commission for selling the cattle than they do when they secure the loan for them. I have no interest in this matter at all. I am merely giving you what information I have.

The cattle that I bought today averaged 828 pounds, and there were 32 steers in the load.

Recross-examination:

My percentage of net profit will vary. If you strike a catastrophe, like we struck last summer, cattle will show a loss. The first two loads I bought this fall cost 7¼, and sold for a dime. They weighed 902 pounds when I bought them. They showed a profit of $1,048, net, after taking out the cost of feeding and handling. The last three loads of cattle netted about $1,200. In figuring my cost I did not figure in any interest on the value of my farm, nor salary for myself. Whatever profit there is, is my income for interest and management of the farm. Before I figure any profit at the end of the year, I figure my invoice value of

[fol. 669] my farm, implements, livestock, and feed, and figure interest on that.

Whereupon the witness was excused.

CHARLES J. KEMP, a witness called by the respondents, after being duly sworn, testified as follows:

I am jack pot man for the Swift and Henry Livestock Commission Company at the Kansas City Stockyards. I weigh the odd cattle, 1, 2, 8 or 9 head bunches as they are cut out of loads and have to be sold separate. I have been with Swift and Henry over 13 years. Before that I worked for the Stockyards Company about 6 or 8 months. When I started with Swift and Henry I helped in the jack pot alley where they handle the cows, stags, bulls, heifers, and mostly she stuff. I went there in June and did not weigh any jack pots until the coming January. We are supposed to be at the yards at 6 o'clock, but some mornings I am late. When we get there we put on our yard clothes, go out to the alley, and I get the night yarding from the head yardman. The head yardman has the yarding of all the loads that come in during the night, and he has it down on his books. He gives me the stuff that belongs in my alley, and I make a written memorandum of that in a book. I work out in the weather.

Then we commence getting the stuff over into the butcher alley, and as soon as one of the salesmen comes we commence sorting. We have three different alleys there and this stuff coming in at night is supposed to be yarded in the dryest and best pens they can find. It might be in any one [fol. 670] of the three alleys. We might find a load of cows and heifers in our grass steer alley or the fat steer alley either, and then they have to be taken over to the butcher alley in the morning. I have another boy who works with me. The cattle come in billed in a man's name, and they are yarded in a certain pen, and the block number and the pen number is on his book. He gives that to me. If it is a plural ownership load, the cattle would all be yarded together. If there is not a letter or telegram on them, where there are different owners, there is usually somebody with them, and if there is nobody with them, sometimes they are

painted or slipped, and we have all that to watch out for.

In the fall of the year we commence yarding cattle down there about 6 o'clock, and I have weighed and yarded and still yarding some more at 4 or 5 o'clock in the afternoon. The trains are liable to drop in any time. We usually have certain pens to sell the straight single ownership loads of yearlings out of. If they have to be sorted, we usually sort them up into smaller pens. The salesman works with us in this yarding, if he is not busy. When he gets so busy selling stuff that he cannot get to us to help us sort, then one or the other of us will do the sorting and the other will hold the gate. We count these bunches of cattle as they move out of their pens to ascertain the number of head and see if it corresponds to the number of head that is given to us by the head yardman.

[fol. 671] We place the straight loads in an advantageous position so that the salesman will lose no time in showing them to the various buyers. If we discover any throw out cattle, they are cut out and yarded in small pens. Usually a load of calves coming off the range will contain some steer calves and some heifer calves. We cut out steer calves and then we cut them for weights. The steer calves are cut together, the lighter steer calves are cut together, and then the little light veals which are there. If they are light enough for veals, the heifers and steers stay together. The heifers are also cut off for weight. After we have finished with the straight loads, we commence on the mixed loads. The calves and bulls are taken off first and separated. Then we sort the cows, taking the canners away from the fleshier cows, and the cutters are cut away. If there are heifers, they are cut away, and if there is any ownership on them, we cut for ownership. If fat steers are in these mixed loads they are cut off and sent around to the steer alley.

The stock cows and stock heifers are separated. If there are just a few stock cows, sometimes they are left in with the fat cows, if we are crowded for pens. We start the feeding men out at 6:30 or 7:00 o'clock. I attend to the feeding in the butcher alley: I tell him how many bales to put to the pens and what pens to put it in. We water some of these cattle as we go along, where they are fat cattle and dry. We have to fill the pens full of water and cut off 8 or 10 head at a time and let them get in and drink, [fol. 672] and when they get through push them out and

put some more in. The drive in cattle commence coming in before we finish sorting the rail consignments.

I have seen the butcher cattle salesman down at the alley lots of mornings at 7 o'clock. He is there before we get through with this sorting. It is usually around 9:00 or 9:30 when we get through sorting the first run of cattle. The buyers begin to arrive in the alley before that. If we are up with our sorting and watering and feeding when the trading starts, I go along and open the gate for the salesman and assist him in any way I can. The two of us that work in the butcher alley check our books against one another to see if we both correspond.

Cattle are sometimes marked with brands. We see cattle that are marked with shears or paint, or ropes and wire around their necks and clips on them. We use yellow greased chalk to do our marking. If we have a load that comes in that has several owners, we find out which owner has the most cattle, and we don't mark his before we mark the other people's cattle in there. We keep a record of the marks in our yard book during the day. Before we have done all these things some of the cattle generally have been sold; even while we are sorting or watering a load of fancy heifers or fancy cows, something is sold, and the salesman will say he has a load that he wants weighed. We drop everything and go and weigh these and come back. My worry is over after they go on the scales and I have [fol. 673] gone in and told the weighmaster whom they go to, and the foreman on the outside.

High line cattle consist of straight loads. In the butcher alley after the salesman has sold 10 or 15 drafts of stuff, he will holler at one of us boys that he wants to get out a jack pot. One or the other of us will quit whatever we are doing right then and go and receive these cattle and get them ready to go to the jack pot. He opens the pen and goes in there and tells you which cows go to a certain packer. He points them out to us and we throw them out in the alley. He will go to the next pen and the same performance is gone through with. We get all the way from 5 to 20 drafts in this pot, and we take them up to the jack pot and sort these out to where they go. These cattle in the jack pot belong to different owners. We know who the owner is, and the animal, and whom she goes to. I don't know the price but I do know the identify of the animal

with respect to both seller and buyer. No record or written memorandum is made of it at the time. We carry that in our mind until we get past the scales with the cattle.

There are four big packers down there and each one of those has 7 or 8 different pens that they yard their stuff in, and then there is any number of traders down there and we have to remember their name and whom they trade through. In one jack pot you might have 7 or 8 owners. I have had as high as 20 bunches and there might be 25 or 30 owners represented in them. Everybody weighs by turns [fol. 674] and you have to wait your turn at the scales. If it happens not to be your turn and congestion develops in the alley, you just have to wait. As you take each pot up there, you sort it in little pockets next the scales.

We get the scale tickets with the owner's name on them and the written weight of the cow and also the stamped weight. We put the sex on the ticket and then we go back to the salesman and he calls the price to me and I write the price in.

The congestion in the alleys will not last over an hour or an hour and a half at any time. The market opens at 8 o'clock and as soon as they get enough cattle sold to start a pot, we keep that up until we are through or until they have sold all the cattle they can sell. I sell bulls. If there is a fancy bull in the load sometimes the butcher salesman will sell him. I just go down and look at the bulls and price them to the buyers. If I think he has bid me the market, I sell them to him and, if not, I will try somebody else. Sometimes I consult with the other salesmen on the prices of them but on the odd bulls each of us usually knows by the way they bid whether the market is going to be higher or lower. The average jack pot will run from 35 to 50 drafts. Any time he has enough cattle to start to the scales, we start a pot. I have not weighed any jack pots after dark on the last few years since this last scale was built. Prior to that time, I did. The erection of this scale has speeded up the weighing.

[fol. 675] During the first two or three days of the week in the fall of the year it is usually 6:30 to 7:00 o'clock before we get through. On one occasion I weighed either 225 or 275 drafts out of one pot. The first pot I ever took to the scales I took only 5 drafts and I had a

lot of trouble remembering all those. In a few days I got where I would take 4 or 5 more and just kept on and it was 6 months before I could take 25 or 30 drafts and get them right. If you don't get them right, you have to go and get the animal, have it reweighed to the right people, and if we weigh two owners together we have to get both of them. The shrink causes quite a bit of trouble. The owner has to take the second weight, if we weigh two different owners together. In the interval the cow will shrink. I think the efficient butcher yardman or jack pot weigher is an asset to a salesman. The salesman wants to be sure that these cattle are yarded to the right packer. The yard company cleans the pens. If the yard company does not get to us often enough to keep them clean in rainy weather and times like that when we are not so busy we do our own shoveling. We check our yard books after we get through with the first sorting of the morning. After we weigh these cattle these tickets are sent up, but we don't check on them any more until all the tickets are in that night. I hunt up buyers for the salesman. If there is some buyer that is in a different part of the yards, I go back to look him up and have him come over there. If any cattle are unsold at the end of the day we get the count on them [fol. 676] and the ownership. We write them down in the book.

After everything is over we go to the office. The tickets are handed to the bookkeeper and figured up, and we check the number of head against the unloading bill that comes in on the train, and then we check the ownership against the manifest that came by mail, or the ownership that was given somebody in the yards. Some nights I leave the office around 5:30, and some nights it is 7:30 or 8. I have left there at 11:30.

Cross-examination:

The common type of cattle which comes in the butcher class is the white faced cattle. That class includes cows, grass fat canners and cutters, calves and bulls and heifers. We have butcher cattle the year round. The heavy run commences about the first of August and runs until about the first of December. In the fall of the year when we are very crowded for pens I might leave two or three different grades of cows together because we have no other pens to put them in. We don't want to put them in the

alleys or in the back pockets or let them go without feed or water for awhile. If we have plenty of pens we usually cut our stuff up for grades, to a certain extent. The extent to which we do that is dependent somewhat upon the number of pens that are available. We usually commence watering around 7:30 or 8:00 o'clock. It is owing to how cold the weather is. With a load of 35 fat heifers we try to pick three pens for them and cut them up. We let each one of them have all the water it wants until it turns away [fol. 677] from the trough before we run it away. We must stand there and wait until they get through. Sometimes we put the whole load out in the alley and start the water in the pens and let them get filled up, and then we will cut off 8 or 10 and let them run in. After they have had their fill of water, we put them all back in one pen. Two of us jack pot men are over there and both salesmen help us when we are busy. Swift and Henry gets a good many butcher cattle. We always have a lot of jack pots but I don't believe we get as many as we do of the stockers and feeders.

The first three days are the busiest days and Thursday and Friday are just fair. We stay down there pretty late during the first three days of the week. The next two days we stay until about 4:00 or 4:30. On Friday we get out a circular and it keeps us around there until 3:30 or 4:00 o'clock. We are just supposed to show up and if anything comes we are to be there to take care of it. The long hours are in the fall of the year, when the big runs are coming. We are not supposed to leave there even in the light seasons until a certain time of the day because anything could come up with a commission firm. In the rainy seasons we do quite a bit of cleaning of the pens. We just push the manure under the mangers so that the center of the pen will be fair shape. The Stockyards Company comes along later and cleans it up. If we have had a big day sometimes we are an hour or more checking against [fol. 678] our yardbook in the office. It does not take very long during the lighter periods.

Redirect examination:

These bulls that we handle are sometimes rather unruly and when we get several of them in a jack pot it delays

the operation of the weighing. You have got to be very careful when you are handling bulls. Western cows are usually more wild than native cows. We are on foot and we have to watch these cattle in order to avoid injury.

Recross-examination:

Bulls are not put in with anything but calves as a usual thing. Bulls are always sold on a weight basis. In the fall of the year we have one horse in the butcher alley. The calf salesman will ride a while and if he gets tired and the other man needs the horse, he will get off and let the other man use him for a while.

Whereupon the witness was excused.

E. R. Ransom, a witness called by the Respondents, after being duly sworn, testified as follows:

I am a chute man, running trains for John Clay & Company at the Kansas City Stockyards. I receive the cattle at the unloading chutes at the stockyards. I have been employed by John Clay & Company over 8 years. Before that I was with Swift & Henry, and I have worked at the stockyards 12 years. I was running the chutes for 2 years [fol. 679] for Swift & Henry. Before that I was employed by the Kansas City stockyards company in counting cattle, following cattle, and feeding. I was raised on a farm in Arkansas. When I came to the yard I found that it took time to become accustomed to the routine of the work for the Stockyards Company. I would say that it took me about 12 months. I had the help of Swift & Henry's men or I could not have performed the work. I was green at the work and it all took me 8 or 9 months to get more accustomed to it. I was not trusted. I was working under a man and I did what I was told. I worked under the direction of this other chute man the whole 2 years. When I first started in it took me longer to perform the same operation than it takes now. When I started in I was not acquainted with all the foremen of the Stockyards Company and I was not posted on how to get from these unloading chutes to our pens. At that time it would take me maybe 2 hours to get to our pens from one of the unloading docks where now I can make it from 15 to 20

minutes by knowing all the routings. Knowledge of these routings comes with increased experience in my work.

Mr. Stewart, who was in charge of my work, would give me instructions. He would tell me that we had a load of cattle unloaded at a certain dock, and he would tell me how to go and get this load of cattle.

I come in contact with some of the shippers in the course of the performance of my duties. They are always very excited about keeping their livestock from being mixed with other livestock. It takes time to become suffi- [fol. 680] ciently experienced to get acquainted with the different grades and breeds of cattle. I get down at the yards from a quarter till to a quarter after six. I go to the office and read the mail and find out the instructions on consignments. It takes me about 20 minutes to change my clothes and look over the mail. If I can get away I go back about 8 o'clock and take another look at the mail. I go to the train office where the Stockyards Company writes the bills on the tab. It takes me about 20 minutes to look over these sheets showing arrivals of consignments of livestock. I see our night man there. As a rule those cattle will be yarded by that time. The division man of the Stockyards Company will turn the cattle over to us then. The Yard company's man will not follow them there after they yard them.

Instead of just going in front of the cattle and leading the way, we have to take complete charge of them. We are responsible for them as they are counted to us at that pen. If we should lose one it is on the commission company. When I am in the train office I make a record in my book of these consignments and car numbers. If there are 3 or 4 boys ahead of me I have to wait until the foreman turns them out, and if they don't happen to have a man following the cattle, we have to wait until they get men who come back from different places where they have followed cattle.

I believe the tracks are a mile long, or better. If there are three loads of cattle and they don't look alike, I will [fol. 681] run them separately. If we have two loads of one class and another load of another class, I will run the two loads together and the other one separate. The Stockyards Company puts men between the different loads. I can get a load of cattle to the pens by 5 or 6 different

routings. If I am blocked, I can make time by going these routings. I never learned that until I was there 2 or 3 years, and now I have learned these routings and know about the best way to go. I can get a load of cattle now in 30 minutes whereas when I first began it might take me two hours to get a load. They have had the block maybe as long as 2 hours. That would occur during the busy season when we have say 30,000 cattle. We have had lots of customers feel as though we had laid down on the job by not getting their cattle through earlier. They want their cattle to get over and fill, and if the market should be good in the morning they want them on the market early.

In the case of outbound shipments, I have to see the order buyers first and get my shipping order instructions from them, I mean the order buyers employed by our firm. Then I go to our stenographer and have her make those orders out on little pasteboard cards. Sometimes they show the right routing and road, and sometimes I have to go to the railroad and find out the best routing and the cheapest rate. After the order is made out I take it to the railroad on the 8th floor, and I sign the contract there, and on a long haul I sign a 36 hour release. Then I take the red sheet to the Government office and answer the questions. They ask if they are bulls, cows or steers. Cows [fol. 682] going to certain states or certain count-s have to be tested or branded. I find that out from the Government. After I get these orders in I go down to the shipping division in the north end of the yards. I get the cattle together and get them up to the scales and weigh them. Then the yard company will deliver them to me to take to the train in order to get them out.

There are occasions when the purchasers desire the branding, dehorning, or vaccination of cattle. I handle it all for our company. The other day I had a load of cattle branded that I thought was going to Illinois. After I had them branded they went to Ohio, and we lost the branding on them, which was ten cents a head. It is very important to be accurate in regard to the destinations that we give the railroads and the Stockyards Company with reference to these cattle. Mistakes are not like they were when I first started. I have not made the mistakes that I used to. In an ordinary business day of fair volume I

turn in fifty to sixty pen numbers. I could turn in one pen number wrong and cost the company two or three hundred dollars.

I have had as high as 40 or 45 loads of cattle held over because the order buyers have not been able to fill their orders in time to have the cattle shipped off the market that day. I have to move those cattle fifty to one hundred yards where there are watering troughs and mangers in the 75 block or take them to our alley. I have to have each consignment separate and be very careful not to get [fol. 683] my accounts and pen numbers mixed.

I follow the feed on the freight to each customer. The yard company has a ticket that we mark the feed on and where it is going. I mark on that ticket "follow," and put the owner's name on this ticket. It goes to the freight office of the Stockyards Company, and there they follow it out. In that instance the feed charge is collected along with the freight charge at destination. If we get the feed on the wrong customer, we have to refund the cost of the feed. I have seen difficulties of this sort occur many times. Increased experience assists me in these difficulties and losses.

Cross-examination:

I started to work for the Stockyards Company in the capacity of driving cattle, following the cattle after train runners. I worked at all the docks. After 9 o'clock I was sent to the scales and drove cattle from the scales to the packing companies. I went to work at 6:30 in the morning. When I was following the catt-e I did not even know the different train runners. I have often followed cattle and got lost and did not know how to get back to different parts of the yards. Maybe I would never get back where I was supposed to be. I would just go to one of the other tracks and go to work. I was supposed to work at a particular track, wherever the boss sent me from the train office. I followed the livestock until it got in the pens and handed the commission man the ticket.

[fol. 684] The older I got I got a better position, and finally got a division where I counted cattle. I worked as a follower of cattle around 6 or 7 months. As a division man I was stationed at block 9 and counted cattle that was sent down over this dock to the traders. Then I went to

sorting jack pots, where there were three or four different traders thrown into a bunch. The Stockyards Company could not furnish two men to send one head at a time, they had to send ten or fifteen, and therefore they would jack pot them. Then I went to the sheep house and counted sheep and yarded sheet. Then I went to work for Witherspoon for three or four days a week as an extra man. Then I worked for Swift & Henry two falls. Then I went to work for John Clay & Company as a helper down in the alley. I helped the calf man, weighed calves, and held gates while he sorted them. I worked in that capacity about a year and then I went to the chutes. John Clay & Company had three train runners and I worked under them. I am now head train man for John Clay & Company. When I came with John Clay & Company I think they got more business than they do now. I have been train runner for John Clay & Company for about 5 years. Two men that were running trains when I came with John Clay & Company were let out of the business because they were unsatisfactory. One of them was retired.

In the instance where we lost $500 on a shipment, I was partly responsible and the order buyer was partly responsible. During the period that I worked for the Stockyards Company and held different positions I got more pay as I [fol. 685] went from one position to another. When I started to work for Shift & Henry I got higher pay than I received from the Stockyards Company. I went to work for John Clay & Company at about the same salary. I gradually got raises. As I became more efficient it was recognized in the way of receiving larger salary. I have had a raise every year up until this year, ever since I have been with John Clay & Company, and sometimes during the year.

I have to weigh back cattle that we have bought which have lump jaw or are blind or cripp-ed. I also have to weigh back in the case of over loads, and have ordered cattle out as late as 11:30 at night. Ordinarily they are billed out around 6 or 7 o'clock in the evening.

I am down there until most of the livestock is loaded. The Stockyards Company does the loading. I am supposed to drive the cattle up to the chutes when they are to be branded, dehorned or vaccinated. We have one new man and they tell him what to do before he does it. The firm has to keep responsible men in these positions to prevent

errors from happening. I do not make as many mistakes as I did when I started, but I still make some. I do not know how many I made this last year. I judge I made five or six. They cost around $3.75 a car. The reason for these mistakes was having a new customer, not knowing the correct name, and we fed the cattle in it and failed to follow out on the freight charges. I believe I make more mistakes on the feed than anything else. I made mistakes [fol. 686] on pen numbers. I mixed 22 cars of cattle that had to be loaded, unloaded and reloaded. I made mistakes on freight rates. I believe I made one or two last year. The firm does not make me stand for these mistakes. I feel I qualify for my job.

Redirect examination:

Order buyers for our company can buy cattle as late as they care to. The time is determined by whether or not the day is in the fall of the year and it is light enough so they can see. My company during the course of the year's business receive mixed shipments of livestock containing cattle, hogs and sheep. When a consignment of that character is received it requires two men to handle it. I might go to the chute and take possession of the cattle and Mr. Wilson would also be there and take possession of the hogs. During the first four or five days of the week I leave the yard all the way from 5 to 7 o'clock. I get away early on Saturday and at 4 o'clock on Friday.

Recross-examination:

My employment requires me to handle our outbound stuff and I cannot do it without staying there until 5 or 6 o'clock in the evening, and sometimes seven. During the past two years there has not been anything unusually difficult about my duties.

Redirect examination:

The reason I am not blocked as much in recent years as I was when I first started running shipments from the chutes is due to the fact that I am better acquainted with the yards.

[fol. 687] Recross-examination:

When I get blocked in the yards there is a disadvantage to the shipper because it prevents him from getting a fill

on his cattle. We have a claim agent that handles the claim business. He is employed by John Clay & Company.

Whereupon the witness was excused.

HARVEY M. PYKE, a witness called by the Respondents, after being duly sworn, testified as follows:

I am employed by the National Livestock Commission Co. at the Kansas City Stockyards as head yardman. I have been employed by that association since 1918. I have charge of the yard men who see about the work, the counting, yarding and feeding of cattle, keeping the pens clean, seeing that they get water, taking care of cattle in general, making notations of crips and deads, seeing that the cattle get over to the pens from the chutes, helping to sort, and seeing that the cattle go to the scales to be weighed. When cattle are held over at night, I take charge of the feeding of them, the yarding of them, and see that they are put in the proper places and fed properly. I have been head yardman about 6 years. When I first went to work for the National Livestock people I had charge of the stocker steer alley and the calf alley. I weighed stocker steers and calves, helped sort them and kept track of them.

Prior to 1918 I was employed by Clay Robinson & Co. I [fol. 688] lacked 10 days of being there 10 years. Prior to that I worked for the Kansas City Stockyards Company, driving a feed wagon and feeding cattle. The experience as an employee of the stockyards company was of value to me after I went to work for the livestock commission concern. I got pretty well acquainted with the yards. When I quit driving the feed wagon there was not a pen in the yards that I did not know. In a way that experience proved valuable to me in my occupation as a jack pot weigher for Clay, Robinson & Co. It did not have much to do with the weighing of jackpots. My experience also familiarzied me with the various grades and classes of cattle which arrive at the Kansas City Stockyards.

I was raised on a farm and had been associated with the different kinds of livestock. When I went to work for Clay Robinson & Co. I immediately started to work in the jack pot alley. I held gates, turned on water, shook the hay, and familiarized myself with the jack pot part of it. My activities were supervised by another employee. I think

it was about a year before I took any jack pots to amount to anything to the scales. I might have taken a few drafts of cattle to the scales earlier. I weighed jack pots cattles for Clay Robinson & Co. about 5 years. I feel that during the first year, because of the training than I got. A man taking a jack pot has to know the different classes of cattle and the difference between cattle that go to different places, and you have got to know the cattle that you get out of [fol. 689] certain pens and whom they belong to. You have got to train your memory in order to do that. Back in those days the local packers did not have as many different pens in which they had their livestock weighed as they do at the present time. There is a big difference now because at that time the packer would sort their own cattle after they would buy them but now each packer buyer has probably 10 or 15 numbers and he grades his cattle, whichever way he wants to weigh them and you have to weigh your cattle according to those numbers so that when they go to the pens the packers will not have to sort them.

I arrive at the yards from quarter of six to six o'clock in the morning. The first thing I do is to go to the train office, that is where all the bills come from, the railroad, and the yard company tabs them up there.

The night man goes to work at 6 o'clock in the evening and he does not go off duty until I get there. I check up with him on all consignments received during the night. Unless I get these tickets before I see him, he gives me the pens in which the livestock is yarded. The night man puts the pen numbers on the ticket. We have a letter file concerning shipments coming in. I have always contended that no two men's cattle looked alike. It is necessary for the train runner to have knowledge that will enable him to detect the difference. It frequently happens that two loads of livestock belonging to two different owners will come billed in one owner's name for the reason that one of the owners may not be able to accompany the livestock [fol. 690] to market.

My next job is to go to the yards and count all the cattle that came in during the night. I turn them out of the pens and count them. The division boy who has charge of certain parts of the yards and of unlocking for the yard company is the only one that has a key. He and I count the cattle together. They have to check with these tickets that we get from the chutes. If they don't check then we have

to go to the claim agent to get them straightened out. After we get through counting cattle we send the cows to the cow alley, heifers and cows to the same alley, stocker steers to the stocker alley, and fat cattle to the fat cattle alley. As long as there is any sorting to be done that we can do ourselves and have time to do it, we do it before the salesman comes out. We take the calves off and send them to the calf alley.

I have 4 or 5 boys that work with me. I make a written memorandum of all instances where there may be a cripple in the consignment. Prior to the establishment of this Kansas City Cripple Association there were about 15 fellows around the yards buying cripples. The chute runner would sell them to these buyers. Sometimes he would get what they are worth, and sometimes he would not. The animals that die in our pens are sent to the Standard Rendering Association, which has a wagon over at the yards all the time.

Our organization employs two train runners. The train [fol. 691] runner is supposed to count them into the pens, but I always count them over. The big part of the day during which the shipments arrive to our organization is from 2:30 to 3 o'clock in the morning until 10 o'clock in the morning. It seems to me that they come in all times of the day. I help to sort and when the salesman first comes out I give him the ownership, the number of cattle in each pen, and then I help him sort, water and feed. If the hay is not shook up, I see that it is shook up. I spend some time watering livestock and cleaning pens. The salesman does the sorting and the yardman's job is to hold the gate.

Sometimes we receive bulls in consignment to our firm. They are more troublesome to handle than perhaps some other class of cattle. We also handle Brahma cattle. They are a ticklish bunch and hard to handle. I keep a record of the hay that is fed in my particular department and turn the record in every night. I make a report to the office man as to what I feed each man's livestock.

During the past 5 years I have not been weighing jack pot cattle. If I were assigned to jack pot weighing I don't think I could engage upon that occupation with as much efficiency as I had during the time that I was in the employ of Clay Robinson & Co. I have not kept my mind in trim for weighing jack pots. I think I could acquire it after some time spent at it. If a salesman is showing cattle and

he wants a buyer or somebody that he wants to come over and look at some cattle, he will probably send me after him, [fol. 692] or they may want me to take people to the order buyers, people that come here to buy cattle. I go to the bulletin board in the Exchange Building to obtain information for the salesmen on other competitive markets.

I do some work in the office. We enclose circulars and every night I check up with the office man and see that our customers get the right number of cattle. It does not take very long because we have good men in our alleys and they don't make many mistakes. If there is a mistake it takes a long time sometimes to correct it. We clean the floors of the pens nearly every day. The cleaner the cattle are, the better they look to the buyer. At this time of the year we leave the yard between 5 or 6 o'clock in the evening. Last fall I think I worked as late as about 10 o'clock. I am required by my employers to be present at the market on 7 days of the week. I come down on Sunday to receive cattle, and see that they are properly taken care of, fed, watered and bedded. In years gone by the buyers used to get out there between 8 and 9 o'clock, but nowadays they get out around 10 o'clock. They get out and ride around a little to see what is here, but they don't start to bid sometimes before 11 or 12 o'clock. All depends on the run of cattle on the different markets. There has been a slowing up in the way in which buyers commence their active trading operations. There are times when consignments of cattle to our organization are not sold on the day of arrival. If they are not sold we have to put them away and see that [fol. 693] they have plenty of room and if they are to be fed again, feed them grain, or do whatever is necessary to take proper care of them. The longest time that I remember of a shipment of livestock being carried over was two weeks. The owner was not satisfied with the price he was bid. At another time we carried a load of stags and steers a week, and we finally sold them and the man wrote back and complimented us on holding the cattle as long as we did.

There are instances in our organization where consignments of cattle are received, watered, fed, and sorted and presented to the buyers but not sold, and then forwarded on to another market. Two weeks ago Thursday we had a load of cattle from a man who was not satisfied with the price he was bid here and we held them until Sunday and shipped them out. We took them to the 75 block, which is

the shipping division and split them into two pens and fed them chops and hay and watered them every day until the time that they were loaded out. Feed had to be ordered every day. It does happen occasionally.

Cross-examination:

During the entire period of my employment by the Stockyards Company I worked practically all the time on the feed wagon. For about two weeks I followed the feed wagon as a helper. The man in charge of the feed wagon is responsible for whatever feed he puts out and the man that follows is only a helper. He just hands the bales to the man on the wagon when he loads and when they are un- [fol. 694] loaded. When they are feeding cattle he opens the gates and helps around in the alley. During the time I worked on the feed wagon my activities were confined mainly to the cattle division. I have supervision over the yarding of all cattle of all grades when they come from the chutes and after they are sorted the salesman tells us then where he wants them yarded. The knowledge and information which I gained while I was working on the feed wagon was a step toward what I am doing now.

I worked in the jack pot alley about 5 years for Clay Robinson & Co. Then I was sent over to the quarantine division and had charge of all the cattle over there. I was over there two years or more. We would wind up over there about noon and in the afternoon I would go out to the shippers. After I quit that job I went back to the fat steer alley for Mr. Reed, who was the fat steer salesman at that time. My duties there were helping sorting, feeding watering and weighing of cattle. I thought it was a promotion to get out of the jack pot alley. John Clay increased my salary three times while I worked for him. That was partly in recognition of my increased usefulness to the firm and partly due to the change in the cost of living. When I started to work for the National I received more than I did from Clay Robinson. It was considered a step in advance, when I went from the stocker and feeder alley to the fat steer alley. I was able to start in the stocker and [fol. 695] feeder alley for the National and assume those duties by reason of the fact of my previous experience. I think I worked in the fat steer alley about a year and a half or two years before I became head yardman. Five

men work under me as head yardman. The youngest one of those has been there about 6 years, and the rest have been employed a longer time. Since I have been with the National other firms have hired yardmen away from us. I guess that is because they get more money.

Packers require more specialized weighing now because it saves them a lot of work if they can get the commission men to do the work for them. That has been going on probably three years. They might buy a bunch of cows and say: "Weigh these to number so and so," and pick out another one and say: "Weigh her to so and so, and send her to another pen." The buyer comes into the pen and buys the whole pen at a price, and then gives directions with respect to weighing of the different animals.

I would rather work in the fat steer alley because we don't have so much hard work. In the stocker steer alley there is quite a lot of sorting. When we carry livestock over, we leave it out there in the pens if the weather is favorable. If not, we take it to the shed. On Sunday I stay down there until everything is reported in and the cattle are taken care of. Another yardman goes down there too on Sunday.

The matter of buyers coming out late to buy has gotten worse in the last year. I don't know whether they are [fol. 696] waiting for orders from Chicago or what they are waiting for, but they don't come out. The order buyers get out early.

Redirect examination:

My firm carried over livestock on Monday of this week. My firm did not sell a single load of fat steers last Monday. It carried over one load and a few odd ones on Tuesday. It carried over a load on Wednesday night. There is just as much work in the fat steer alley but it is not so strenuous as it is in the stocker steer alley. We handle more fat steers in the course of a year than we do of stockers and feeders. The yardman in the fat steer alley does not handle as many drafts of cattle as the man in the stocker steer alley. The fat steer consignments come more to straight carloads than the other classes of cattle. We are allowed 30 minutes at the high line scale, which is a straight bunch scale where anything over 10 head is weighed. At the jack pot scale we are allowed 55 minutes to weigh, and

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there are nine firms that weigh at this scale. If we have more jack pots than we can weigh in 55 minutes, we are cut off and we have to wait until our turn comes again. That is the reason that the jack pot man is so much later getting through than anybody else.

If the five men under my employ were to leave the National, I could not go out on the street and pick up men and put them in here and get the work done because they would not have the experience. It takes experienced men [fol. 697] to weigh jack pots and handle cattle. We have men down at the stockyards that work extra here and there, wherever they can get a job, and we could not put them in the jack pot alley and let them handle it the way it ought to be handled. It would take a long time to pick up men and train them to be as efficient as the men that are now working under me, and they would not all make jack pot men. It is not every man that can be made into a jack pot weigher.

Shipments came to market in larger droves when I worked for Clay Robinson & Co. than they do now. They did hardly any sorting at all in those big droves. I remember we had about 25 loads of cows from a certain outfit for three days a week for two or three weeks and we never sorted them at all. I don't think they ever come in here now but what they are sorted.

Recross-examination:

As near as I can remember, we had 28 loads of fat steers last Monday. We carried all of them over. All but one was sold the next day. We rec-ived 7 or 8 loads on Tuesday. The market was better on Tuesday than it was the day before. I think we carried over one load on Tuesday. We had four or five loads of fat steers on Wednesday.

Mr. Adams and Mr. Olander sell the fat steers for my company.

Whereupon the witness was excused.

[fol. 698] Mr. George W. Hobbs, a witness called by the Respondents, after being duly sworn, testified as follows:

I am general manager of the Farmers Union Livestock Commission Co., and represent that company in this pro-

ceeding. I have been general manager approximately two years. Before that I was cashier and office manager. I have been connected with that market agency ten years. Before that I was not in the livestock commission business but have handled livestock practically all my life. My activity has been confined practically all the time to office operations.

The Farmers Union Livestock Commission Co. is a corporation, incorporated under the laws of Kansas as a cooperative. It has been engaged in business at the Kansas City Stockyards since October 5, 1918. All of the members of the Farmers Union of Kansas are affiliated with this cooperative corporation. The Farmers Union of Kansas is an organization of farmers. At the time of the organization of the Livestock Commission Company the Farmers Union of Kansas had approximately 20,000 members. This membership has decreased at the present time. The Farmers Union of Kansas is affiliated with the National Farmers Union which has state organizations as members. There are 26 states that have Farmers Union organizations. Of the central states they are Arkansas, Oklahoma, Missouri, Kansas, Colorado, Montana, Nebraska, Iowa, Illinois, Arizona, Minnesota and the Dakotas. These other state organizations maintain cooperative corporations upon other terminal or cooperative livestock markets. They operate [fol. 699] at the National Stockyards, Kansas City, Wichita, Denver, St. Joe, Omaha, Sioux City, South St. Paul, Chicago, Milwaukee, and Sioux Falls. The houses at St. Joe and Omaha were established ahead of Kansas City. The ones at Chicago and National Stockyards were established in 1921. At Wichita in 1923 and Sioux Falls in 1928. These market agency cooperative corporations were established by these associations of farmers designated generally as Farmers Union for the primary purpose of handling the marketing at public markets, the livestock of members of those organizations. They established other corporations or organizations to handle different characters of agricultural commodities. I became acquainted with the agency at Kansas City in 1921. At that time we were not using the clearing house. I recollect that we used the clearing house in 1923, but I would not say whether it was prior to a certain date in 1923 or not. I have a recollection of the formulation of the so called Market Practice Agreement.

My Association subscribes to that agreement and since that time has enjoyed the facilities of the Exchange known as the clearing house, the hog dockage and inspection service. As I remember, it became a party to that agreement in 1923. Since that time this association has not complained of any lack of trading facilities at the Kansas City market.

In our type of organization we refund patronage dividends representing the surplus above operating expenses to member shippers of livestock. We have made such re- [fol. 700] funds during the period of the operation of this agency at the Kansas City market. Members of the Farmers Union of Kansas are of a great deal of assistance, all of the organizations are, in getting and maintaining our business. Each of those state wide organizations has a paper which it puts out each week, and they are constantly talking the marketing of their various commodities at any meeting of the Farmers Union. Members and officers of these parent organizations in the several states have applied their time freely to the upholding of our market agency business at Kansas City, as well as the affiliated corporations at other markets. The work of these parent associations and their membership has been of value to our organization. Our organization has established and developed livestock shipping associations at various shipping points. The Farmers Union of Kansas will go into a certain county and organize various locals all over the county. After they have thoroughly organized that county, they will write us and send us a man's name who might be interested in the handling of the livestock shipping association at these various points. We will immediately write the man whose name is given to us, if I or some other member of the force is not at any of the local meetings to get in touch with the man in regard to the possibility of a livestock shipping association. At these meetings we try to organize a livestock shipping association, select a board of directors, and hire a manager. Sometimes we get the job done in one trip; sometimes it takes two or three trips. Even after they are [fol. 701] organized we may have to go back on the date of their first shipment and assist in marking their livestock and getting it loaded. We have assisted in establishing as many as ten shipping associations in one county. Naturally we expect to receive the consignments of livestock that come from those shipping associations. That has been the prac-

tice of our organization since the date of its establishment. This work has been a determining factor in the volume of our business.

A large proportion of our business comes from such associations. In my judgment, the organization of shipping associations at country points as of December 31, 1928, had a value to our organization. Into the development of that organization there has gone the expenditure of a large amount of time, effort and money, on behalf of our own cooperative agency as well as members of the parent organization and members of that organization. It requires the effort of every one all of the time in giving service to these shipping associations in order to maintain this organization. It is very necessary that someone keep in touch with the manager of these various associations at all times to assist in handling his customers.

We have a paper which we publish called the "Co-Operator." It is published each month. We run a contest in the paper each month, and the shipping association manager who has as many as four loads in any one calendar month will get his name on the list, what we call an honor [fol. 702] roll. At the end of the year we select the three highest and run their pictures in our paper. The efficiency of a shipping association manager is most important in marking livestock. The work in the office is not decreased any at all. If the livestock in each load is marked properly, it requires practically the same amount of effort in the office as well as in the yards. It takes a lot of time in the yards to weigh a shipping association load if the livestock is not marked properly. We received a load of cattle with 113 cattle in the car and 91 owners. That takes considerable work to handle a shipment of that character. The only way that work can be cut down is to have the livestock properly marked, and it was in this case. They were mostly veal calves and they asked us to weigh the largest bunch together that sold at one price and they would prorate the shrink. They had individual home weights, and they prorated the proceeds according to the home weights. We prorate about 60 per cent of the cooperative shipments ourselves. I keep a man that does nothing else but prorate cooperative shipments. It requires a man of experience in that work in order to do it accurately and efficiently.

There is a service charge in our tariff for prorating. It is optional with the man-ger whether he takes advantage of this service. The development of a large volume of this particular type of business in one concern such as ours as [fol. 703] sists in promoting the economy of operations from the standpoint of office expense in prorating. I would say the amount of the charge is reasonable. It so happens that we keep a separate account of the prorating that is done on that job as applied against his salary, and the cost of the machine, depreciation, and so forth, and the cost of prorating to the shipper is not unreasonable. Shipping associations customarily make a charge to their members for the services which they render. Most of the associations at the present time charge 10¢ per hundred weight. I have never heard any objection among our members to the amount of charges which we collect for our services here at the yards. From the net return standpoint 1929's business proved to be the most profitable year. Since 1921 we have been able to make a patronage refund on each year's business, with the possible exception of 1927. Patronage dividends have ranged from 11% to 25½%. We paid a stock dividend but not a patronage dividend prior to 1921. Our books will disclose the refunds which we have made by years. I will get the record showing the gross value of livestock handled each year.

The rules and regulations which are set up in this market practice agreement are desirable and practical from the standpoint of market operations. My firm maintains a deposit of securities with the market practice committee amounting to $10,000. My association receives the earnings or income as it accrues from these securities. I am a mem- [fol. 704] ber of the market practice committee at the present time.

My organization maintains at Kansas City a radio market service. We broadcast from the Topeka station three times daily. The expense of that is distributed among the various state wide business activities of the Farmers Union. This interlocking organization of the Farmers Union in handling various sorts of agricultural commodities has been an advantage to our agency on this market. As an organization we get out a calendar each year that is paid for by five different business activities. It costs us one fifth of the amount that it would ordinarily cost to get

the same amount of advertising. Any time that a man is soliciting insurance for the Farmers Union Insurance Company and happens to run into a load of cattle, we are immediately notified. They carry literature with them in the form of advertising pencils or something like that.

As manager of this association I endeavor to economize in every way possible. The effort and money required to establish in a market agency the trained personnel throughout the yard and office is essential to the most efficient operation. If our organization were wiped out and I had to rebuild it from new material, I would say that we would be just like starting the organization again back in 1918. It is necessary to have trained salesmen that have acquainted themselves with your trade. All that we sell is service and salesmanship and the personnel of a force has a great deal to do with that. When a new man comes into [fol. 705] our office it takes time to get him acquainted with his task. In my judgment, we have an investment of value in our organization in our trained personnel. We could not develop our system and methods over night. It takes several years to work out a system like we have.

These records are very important and we have them figured out from a percentage standpoint, both on the distribution of expenses and distribution of income so that we can tell which department is paying and which department is not paying. We suffered a substantial loss at one time by setting a new man onto a task in connection with the office. I would say that I had a 24 hour day job. I try to get to the office every morning shortly after 6 o'clock, and stay there until the work is out at night. If we don't get these prorates completed, in time for them to go out in the mail at 9 o'clock at the postoffice at the stockyards, we complete them and I take them to the Union Depot. We don't close shop until all of the account sales are out and in the mail and checks for everything. There are times when we have long prorates on shipments of stock that cannot be checked out that night that are held over until the next day, but under ordinary conditions the business that comes in one day goes out the same day. Most everybody is in the office at work by 7:30 or quarter to 8. We have stayed at work as late as midnight, and I would say the first four days of the week we seldom get away from the office before 8 o'clock at night.

[fol. 706] At the present time I have four men in the yard department. They happen to be in the hog yards at this time, and they assist in the office work. They report for duty at 6:30 in the morning and stay until the office work is done that night. Recently I have employed another cattle salesman as an addition to our existing force of salesmen. I don't have any more cattle salesmen than I did in 1929, but I have changed their work. The man that I had selling fat steers has been changed to sell stocker steers and assist in purchasing livestock for customers and do field work. I have the best ability that I can get from the standpoint of salesmanship in the cattle department engaged in selling fat steers. We are paying the new salesman a good salary and I believe his work will more than return the amount of that salary to the value of service to customers. The salesman that I hired has been in the yards for 30 years. He has been selling fat steers for 15 years for one of the leading firms on the market. I think that it requires possibly not that much experience, but the more experience the better. We had a man in our hog department from the date of the origin of the firm until 1922 who received a small salary, and we received a small business. The business ran all the way from 30 to 60 cars a month. We went out until we found a man whom we thought was capable of putting our hog business to the front. He came to us at $6,000 a year in 1922. The business has increased until last year and the year before we handled practically as many hogs as any two firms on the stockyards. As I said before, we have nothing to sell but [fol. 707] service. If we have the type of men in our employ that will give that service, our business will show it. We are now paying the hog salesman over $9,000 a year. I think he is the cheapest man on the force, in connection with the value of his services to the patrons whose hogs he sells.

Our funds do not originate with the Federal Farm Board. I believe it is desirable in the operation of a market agency to build up some reserve against unforeseen or unpredictable losses that may be incident to the transaction of business. The larger the reserve the more apt you are to stand a lean year that you are liable to have at any time. We carry compensation and mortgage and theft insurance in the amount of $65,000. All of the employees that handle

any of the funds at all are all under bond. We carry liability and property damage for our field cars, but we don't carry any public liability with respect to yard operations. I do not believe we carry fire insurance on our furniture and fixtures. I don't think the amount of $3,086.22, set up on our books as the value of furniture and fixtures as of January 1, 1929, would be half of what it would cost new. At the close of the year the account stood at $2,411.70, the reserve for depreciation being $4,961.62. There has been a recent appraisal made, but I don't know the amount of the reproduction value of those assets.

There is competition for business between our agency and the Producers Commission Association. That would take in the Farm Bureau, the Farmers Union, the Grange, [fol. 708] the Missouri Farmers Association, the Equity Union, and various other state wide farm organizations. Members of those organizations in certain instances hold shares of capital stock in our association. A man must be a stockholder in our organization in order to receive patronage dividends. He acquires that stock by signing an application blank at the cost of $1.00 per share. It is necessary to own but one share in order to receive a patronage dividend.

In the case of our organization our reserves have been largely built up out of savings that we could make in handling the business of non members.

I have attended several meetings of the Federal Farm Board of Chicago and elsewhere. Mr. Joe S. Montgomery of St. Paul, Minn., is general manager of the Farmers Livestock Marketing Association, which is a national organization composed of the various Farmers Union houses, together with the Central Cooperative Association of South St. Paul and the Farmers Livestock Commission Co. of the National Stockyards, Ill. The Farmers Union house of St. Paul is a possible exception. We intended the Farmers Livestock Marketing Association to act in the capacity of setting up credit for loan purposes, but we were refused recognition by the Federal Farm Board. In my conferences with the Federal Farm Board it was my understanding that it was the intention of the Board in the construction [fol. 709] of the Agricultural Marketing Act to eliminate competition between different agencies in the sale of livestock. They argued that if they recognized our organiza-

tion, not coming under the National set up, it would be competitive, whereas, if we came through their national set up, it would not be competitive from a cooperative standpoint. I cannot say that they have attempted to consolidate the cooperatives on the various markets. I think possibly that is their intention but it had not gone quite that far.

In order to obtain the cheap money from any one of the cooperatives set up under the Federal Farm Board, it is necessary that livestock in that particular mortgage be marketed through a member of the national organization.

We have not received any credit or funds from the credit corporation set up by the Federal Farm Board.

There was no patronage dividend paid or stock dividend either in 1918 or 1919. In 1921 we paid a stock dividend for 1920 amounting to $1,398.34. There was no patronage or stock dividend paid on 1921 business. In 1923 for the 1922 business we paid 19% of the commissions collected, and the stock dividend amounted to $561.02. The patronage dividend amounted to $14,128.13. In 1924 we paid for 1923 business a stock dividend of $959.22, and a patronage dividend of $27,904.47. In 1925 we paid back on 1924 business 23½%. The stock dividend was $1,077.09, and the patronage dividend was $34,984.29. In 1926 we paid back for 1925 business 13%. The stock dividend was $1,206.73, [fol. 710] and the patronage dividend was $14,739.54. In 1927 we paid back for 1926 business 11%. The stock dividend was $1,263.31, and the patronage dividend was $1,734.75. In 1928 we did not pay a patronage dividend for 1927 business, but we paid a stock dividend amounting to $1,325.18. In 1929 for 1928 business we paid back 22%. The stock dividend amounted to $1,287.12, and the patronage dividend amounted to $20,815.05. In 1930 we paid back for 1929 business 25½%. The stock dividend amounted to $1,290.22, and a patronage dividend amounting to $25,421.81. The total value of livestock handled in 1930 is $8,664,142.67; in 1929 it was $11,151,279.93. In 1928 it amounted to $10,511,686.45; in 1927 it amounted to $9,246,336.11; in 1926 it amounted to $11,501,613.20; in 1925 it amounted to $11,394,114.03; I would say that possibly 66% of our livestock come from cooperative livestock shipping associations. The percentage of patronage dividends paid by this cooperative institution on this market is much smaller

than has been paid by cooperative shipping associations on other markets.

Comparing this market with some of the other markets for 1930, our savings amounted to approximately 25% of the total commission collected. At St. Joseph the percentage of saving is 37.59. At Omaha it is approximately 40%. At Sioux City it is 42.6%. St. Joe has paid back as much as 66%. The Farmers Union at St. Paul has not paid any dividend to my knowledge. The Central Cooperative Association at St. Paul pays a dividend every year of ap- [fol. 711] proximately 30%.

From the standpoint of their organization and their organization affiliations which give them business, the same conditions prevail with respect to the other agencies operating at other markets as I have described to exist at this market. The Farmers Union of Kansas is practically as successful, although not as large a membership as Nebraska or Iowa. The facilities for handling the livestock on the various markets determines the cost of handling, especially so since the drive in business has become such a factor. It is necessary at the Kansas City stockyards for us to drive our cattle approximately a mile after they are unloaded. It requires two men to do that. At St. Joseph and at St. Paul they are not driven anywhere, they are sold at the gate. The stockyards company delivers them. We have to furnish two men at the drive in gate at the cattle yards, and two men at the drive in gate at the hog yards. At most of the other markets the hogs are sold at the drive in gate. At several of the markets livestock are weighed on the ground but at this market everything is taken upstairs to be weighed. It would require at least one more yardman in the cattle yards to take care of a condition of that kind. It makes it just a little bit more expensive from almost every angle to handle livestock at this yards over most any of the other yards.

I do not know of any conditions that have come into existence since the date of the establishment of the present [fol. 712] schedule, or as present exists now, which would, in my judgment, from the standpoint of its altitude make the schedule that was reasonable in 1925 unreasonable at the present time. We have been giving our customers the very best of market service at cost by virtue of the fact that we refunded to them the amount that was not neces-

sary to run the business. Any man who is a producer of livestock is eligible to patronize our institution, but in order to participate in patronage dividends he must become a stockholder. With his permission we can deduct the $1 from the proceeds of the first consignment.

The increased activity in the last five or six years among the packers in purchasing livestock direct which does not move through the yards has tended to limit the volume of our business quite materially.

Cross-examination:

I cannot say that I have made any particular study of direct buying. We have a branch office at Wichita and I am the manager of that office. I have an assistant there. I take care of the correspondence that pertains to the general business at this office here. I work entirely under a board of directors, which meets four times a year. It takes a certain amount of my time every day to work up the details with the manager at Wichita, either by wire or telephone. I go down there pretty often. I go down six or eight times a year. Sometimes I spend a day and sometimes I might spend a week. We carry on entirely separate [fol. 713] set of books for the Wichita branch. When the Wichita house was organized, the Kansas City house furnished them the capital with which to do business. At the close of business in 1930, that capital had all been paid back to the Kansas City house. That branch was organized in 1923. My entire time is charged against the Kansas City branch. We issue the capital stock from the Kansas City house and we get a detailed report at the end of each calendar month of the amount of business handled and a detailed expense account. That is made up by the assistant manager at the Wichita branch. We keep these reports separate at the end of the year in making out our patronage dividends. Any man who is a member of the Wichita branch is eligible to patronage dividends from the Kansas City house if he has done any business here during that calendar year. He is also eligible to a dividend on the Wichita house with capital stock owned at the Kansas City house.

A great deal of our work in the country in connection with the organization of shipping associations is done at night. We leave here in the afternoon and hold a meeting

at night, and sometimes drive back the same night. It is very necessary to make trips out through the country and visit the producers themselves. They are merely a solicitious trip. I make many of those trips. I deal with the manager, almost exclusively. There are a number of our managers of shipping associations who are managers of elevators. It is almost impossible for them to come along [fol. 714] with their shipments, and consequently it is necessary every so often to make a trip to the country to visit these managers. I do that work myself. I don't go to the feed lots of fat cattle. We send our steer man, our butcher salesman.

My visiting with producers is done mostly at meetings. We have approximately 350 livestock shipping associations. They do not all ship to the Kansas City house. They ship to the Kansas City market and not to our house. There are a few of them that we have never been able to get. We don't get all the business of the shipping associations set up by the Farmers Union. The other agencies at the Kansas City market make an effort to get that business too. In my opinion, the chief factor among producers in selecting their agency at a central market is service. I mean service in selling and handling their livestock at the stockyards. I feel that if a shipping association ships to you and is pleased with your service, it tends to come back the next time.

In 1929 the administration expense was ten per cent of the expense, accounting 12.4 per cent, advertising 8.9 per cent, general expense 12.2 per cent, field expense 1.6 per cent, cattle yards 23.2 per cent, hog yards 24.6 per cent, sheep yards 3.9 per cent, and purchasing department 3.2 per cent. The salaries in the administration include my salary and the salary of one girl and half the salary of another girl and half the salary of one man. We split our overhead on the basis of an estimate of the time required [fol. 715] in each one of those departments.

I came out of school in 1915 and worked for the Burlington until I joined the Navy. I finished up with the Burlington as a telegraph operator. I have had livestock experience on the farm all my life. I came with the Farmers Union first as an account sale man. I made account sales and prorated, and did general office work until 1923 when the Wichita house was opened and they sent the office man-

ager from the Kansas City house to Wichita and I became office manager here. The job was known as cashier. We have two separate departments at the present time. I have a man in charge of the books and the cashier's department is separate from that department. I had accounting experience with the Burlington. I did general office work in a small station. In account sale work a man should have experience. However, that is not entirely essential, but he should be accurate and a good writer. I held the position of cashier until 1929. From the time I came to the Farmers Union up until I was general manager I became more efficient in the work that was assigned to me. I was given promotions in salary during that time. I use several of the boys in account sale work in the country. One of them is a stocker steer salesman and the other is advertising manager. It would be hard to tell how much time a stocker steer salesman spends in the country. He goes out in the evening to these local meetings and possibly makes a trip twice a month during the day.

[fol. 716] Our advertising manager has entire charge of the advertising in the way of getting out market letters and market reports. He edits our paper. He obtains the names of men who have cattle on feed from the men who accompany shipments to us. He writes follow up letters on cattle bought to go to the country. He answers considerable correspondence. He devotes some of his time to organization work.

The Farmers Union has an income from the dues of members throughout the State, and the various state wide organizations contribute to the state organization an amount each year. They charge dues and also initiation fee. At St. Joe the Farmers Union Livestock Commission Company pays to the State organization of Kansas the non member portion of the net profits which come in from the State organization of Kansas from their members.

"The Cooperator", which is our local paper, is gotten out by the Farmers Union Livestock Commission Co., the Farmers Union Cooperative Creamery, and the Farmers Union Jobbing Association. The cost is distributed among those three houses. One third of the actual cost is paid by each organization. My work takes me pretty largely over the State of Kansas and part of Missouri.

The "Cooperator" is not limited entirely to stockholders

of our organization. We send that paper to anyone who wants it without charge. There is no paid advertising in [fol. 717] that paper. It goes to about 6,000 people. Sometimes we run out as many as 7,000 or 7,500. In our advertising account is included anything that is given out as advertising, such as pencils and little shipper's books, tickets to the American Royal, and any form of money that is spent for advertising. It includes this paper. It does not include the salary of the advertising manager. I don't charge the advertising man's salary against the advertising account because all of his time is not devoted to advertising. He devotes about one half of his time to it.

I have given some thought to the percentage of the total commissions which would be reasonable for the firm to spend in advertising. For the year 1928 our advertising was $6,684.16; in 1929 it was $5,386.69; and in 1930 it was $4,479.21. Our particular organization being set up as it is, the advertising is not as necessary as it was some five years ago.

About the time that we were running along in nice shape here we had the misfortune to have a man in the capacity of cashier that got away with considerable money. We had to go right out in the territory with the fact that we were able to go ahead and pay them their net proceeds of what they shipped to us.

In business holding I would include service. In business getting I would include advertising and field men expenses. In the field man expense I would include any man that goes to the country to solicit business. We don't make any [fol. 718] appraisal trips. We do not have any account in our books that sets aside appraisal trips, educational trips or soliciting. We merely call it a travel expense. We have travel expense in connection with these three activities. I would regard all three of these activities as business getting activities. However, not necessarily, because during the year 1930 there was $1,095.24 spent as travel expense that was not for any of these items. It was money spent trying to work with the Federal Farm Board. I would not regard that as an annually recurring expense.

Our travel expense includes the expense in connection with working out this organization of our own. I do not know how much that costs separately. The travel expense of $1,095.24 does not include the field man's expense. The

field man's expense last year was $1,389.89 and travel expense was $449.73. That is a business getting expense. The $1,095.24 includes the expense of travel in connection with negotiations with the Farm Board. In 1928 the field man's expense was $2,576.39, in 1929 it was $1,839.62, in 1930 it was $1,811.44. The automobile expense is an expense attached to the firm's car in making trips to the country. I regard this as a business getting expense. It would be hard to determine what reasonable percentage of our commissions should be spent for business getting. That expense is growing less for our firm. Our expense- from an accounting standpoint are a little bit more than any other firm because we have these stockholder's records to keep straight. That requires the attention of one person practically [fol. 719] all the time. It is almost an endless task to do the accounting and get out these patronage dividends. Two people have been working ever since the first of the year at it. It is necessary to go through our stockholder ledger and check that against account sales on every shipment and see whether or not that man is a stockholder. We try to be as careful as we can each day going through the account sale as it is made up with the man it belongs to. We do not have any dissatisfaction with shippers on that account. We do not let them stay dissatisfied because right is right. There is a certain amount set aside each year at the close of business. We have undivided profits for 1929 of $863.54. That means that a certain amount is set aside to take care of those errors and that is the amount that remains in the undivided profits for 1929 and which will go into the surplus and undivided profits. We have a card system used in a bookkeeping machine. Each day those account sales are made up a man or a girl goes over those cards and credits every man with the amount of commission, carrying forward the amount he had on the card plus the amount for that shipment. If he is a stockholder it is stamped "stockholder" at the time the card is made or at the time he purchases stock. We have a new set of cards made on the first day of each year. It takes us about six weeks after the first of the year before we get out our patronage dividends. We frequently have customers who leave us and go to some other firm.

[fol. 720] To a certain extent volume is a factor in the efficiency with which we can handle the business. We did

not handle the largest volume of business in 1929 that we ever handled but we were able to pay a larger per cent of dividend than we had ever paid before. I decreased expenses in 1929 as much as I possibly could consistent with good business. I have not figured out what the percentage will be for 1930 business.

Our most recent employee was the fat steer salesman hired on January 1. He was formerly employed at the Kansas City Stockyards by Martin Brothers & Lee. He has been on the stockyards 30 years. He has been selling steers about 15 years. He has been selling livestock for 22 years. He came to the stockyards as a yard man and was a yard man for a few years.

Whereupon the witness Hobbs was temporarily excused.

J. C. SWIFT, a witness called by the respondents after being duly sworn, testified as follows:

I am president of the Swift & Henry Livestock Commission Company. I have been engaged in that business 32 years. Swift & Henry have been in existence now 22 years. Ten years prior to that I was manager of two other commission firms, one of which succeeded the other. Swift & Henry also have a house at St: Joseph, a separate corporation, and I exercise general supervision over that. I came to Kansas City in 1893 as a graduate of Cornell Law School and practiced law here for six or seven years. I have oc- [fol. 721] casionally sold cattle and I have occasionally bought cattle, both on the yards and more in the country, but generally speaking I exercised the general supervision and direction of the business. Swift & Henry under my management have handled approximately 350 million dollars worth of livestock. I am a member of the Kansas City Livestock Exchange, the Kansas Livestock Association and the Arizona Livestock Association. I am president of the American Royal Livestock Show. There have been two quite pronounced features of the marketing of livestock, one as to the character and volume of the supplies, and the other as to the manner in which these supplies were purchased. When I first went to the yards 30 years ago the stuff moved in pretty good sized bunches. There were no shipping associations and there was no di-

rect buying and there was no truck in business. The stuff was either shipped by the owners or a shipper who gathered up the stuff and made it into carloads. The regular shipper has almost disappeared. The shipping association came and in going in a measure because of the coming of the trucks. Where we used to have 10, 20, 30 and even 40 carload shipments at a time, it is the rarest thing now to have what we call a "string." On the other side of the market in those days, 15 or 20 years ago, there were comparatively few buyers with large orders. You could go out and sell one man two or three thousand cattle in a morning. The yards were not divided. The steer buyer roamed all over the yards for Armour and Swift, the same with the [fol. 722] cow buyer. Now the packers have divided up their buying, reduced their orders, increased the number of men, and you have an entirely new situation to meet. As the transactions get smaller in volume, from the owners' standpoint, they become smaller in volume from the purchasers' standpoint. It required more work in the yards and in the office.

I think every new mile of highway is going to bring a greater percentage of stuff in trucks and that is going to increase the labor in handling the same volume of business. For the first time last year we had months where the receipts of hogs by truck exceeded those by train. The percentage is rapidly increasing and it is increasing with cattle too. We are getting a great many fat cattle from reasonably nearby points and some stock cattle. New elements or types of competition have entered into the business with respect to both the packers and the Government, and referring to the Government I mean the so called cooperative market agencies. In a general way the special facilities and advantages offered by comp-titor, particularly by the Government, make it obviously more difficult for the man that is denied those advantages and opportunities. We find that it takes more effort to do the same volume of business and despite everything we can do, it costs us more to do it with each succeeding year. I think it would be disastrous to the market to trust the sale of all livestock to the stockyards company or to trust it to one and only one market agency. It takes competition and spur to develop the [fol. 723] best that is in us and if you give any man or group of men the feeling that they have absolutely got a

strangle hold on any proposition they cease to function to 100 per cent capacity.

The elimination of competition upon the selling side of the market would be very detrimental to the average price level because the packer buyers are checked very closely upon their buy and how cheap they can buy the stock and the percentage of kill. If they realize that all the stock is in one place and cannot get away, all they would have to do is for one man to take one day and another man another day and swing back and forth. It would be no trouble to take care of these cattle for a day or two pending their killing if they could buy them cheap enough. Now these cattle are distributed between sixty different agencies and if Swift needs a few prime cattle and Armour needs a few and Cudahy a few they are scattered around the yards and they have got to start out trying to get them, and they immediately start a competitive market.

My first duty as an executive manager is to put together the right organization. The next thing was to distribute the work so that it could be handled expeditiously, livestock being a perishable product. The next thing was to furnish capital and to obtain credit enough to take care of the customers. One of the other things is to keep the selling agency on their toes, keep them supplied with all pos- [fol. 724] sible information and keep the men who own the livestock posted as to conditions and demands. My function as I conceive it, is to get the high dollar for my customers out of their livestock. I keep in constant touch with what I consider the key men of other markets. I try to have a little daily visit with the head buyers of the packers. I check up on all the Government reports that I get time to read as to the probable supply. I study the receipts, where they are coming from, and try to get an idea of when the runs from certain sections will be exhausted. I study the general business conditions and try to figure out the probable outlet for the product. I try to reduce this information to some sort of an intelligent expression and convey it to our friends from time to time. There is not a day that I do not have a group of them in to consult me as to whether or not to take on cattle, what kind of feed, what kind of market to get ready for, and how and where to finance them. I feel that my relationship is that of a partner of all of the customers. I use this information in counseling with my

salesmen and buyers. I suppose I average at least ten telephone calls every morning to my different salesmen. I usually go out the first thing in the morning and look the cattle over so I will know the kind, or what we have, and what we have to meet.

There is hardly an afternoon but what I have a little meeting with some of my men and give them the benefit of what I have learned and the experience I have had. In the [fol. 725] course of a year I have a great many contacts. There are three outstanding factors that we always have to keep before us—grass, grain and water. They are the keynotes of the livestock situation and we are constantly on the alert to see what the conditions are with respect to these matters. I often make trips into the country to view with my own eyes and observe these conditions. I often leave here on a Thursday afternoon in my car and drive pretty hard until Saturday night or Sunday night, covering six hundred to a thousand miles, going particularly to centers where we are interested in cattle that are in pastures or maybe larger bunches that are on feed. If they are non resident owners, like Texas men pasturing in Kansas, they frequently request us to make the trip with them. They accompany us and often they go home and leave the matter entirely to us. We market their cattle at our discretion but according to our judgment. I think the judgment of an experienced man who is familiar with the grass and water of a country and knows its record for production or its record for failure is very valuable. I think in many cases it has saved owners thousands of dollars.

When I entered the livestock commission business the spread in price between the lowest grades of livestock on the market and the better grades was not nearly as wide as it is at present. The first day I was down there top cattle brought 5.55 and the cheapest thing on the market was selling around 3¢. Now we have the 3¢ animal and as I left the yards the boys were trying to get 12½ for little Nebraska cattle. We have not only got wide spreads but wide [fol. 726] fluctuations. That has increased our difficulty and I think you can say it has increased our responsibility because we have got to know now what there is a difference in the price of an 800 pound yearling and a 650 pound yearling heifer. Years ago there was not any difference. That situation has no effect upon the necessity for and the

value of this country work or appraisal work which takes place before the livestock is marketed. It has forced us into a lot of labor and expense that we did not experience before.

I devote all my waking hours to Swift & Henry. I have no vacation and no recreation. I find myself down there more and more at night and late on Saturday afternoons. In fact, handling a less volume of business than we used to handle I find myself wrking at least a third more hours. There is hardly a Sunday in the last few years, if I am in town, that I did not feel obliged to go to the office sometime during the day, and very frequently I find myself so crowded that I have to work in the country on Sunday. I was an ardent golfer up to five years ago but have not been able to play since. I gave up my membership in the country club and am concentrating on Swift & Henry. I average three telephone calls each evening when I am at dinner. Frequently I am called in the night on business deals. I have assisted my patrons in obtaining credit and then passed it on to them to the extent of many millions of dol- [fol. 727] lars. Swift & Henry have endorsed the paper and in some instances I have endorsed it personally. We never seek any loans but when we make a loan we figure it is going to be helpful first to the customer and secondly to us. We do not make one third of the loans that we are offered. We even discourage the customer and tell him that we do not think it will make any money, that it is not a good investment for him and we would not care to endorse the paper. Most of our loans come from small centers where there are limited banking accommodations. We have very few range loans either in cattle or sheep and we make no hog loans at all. We never require the buyer to agree to sell livestock when ready for market through our agency. We tell the buyer that if he can sell his stuff at any time at home for more than he thinks it would bring on the market to do it and we do not charge any commission for that. We want our customers to prosper and if they are prosperous they will stay in business and whatever is for their interest in the long run is for our best interest. I have always felt that whenever you forced a customer to do something that he felt was unfair, that ultimately it rebounded adversely to all concerned. I believe if a service is rendered, if we

sell livestock on the market, that we should be paid for it but I do not believe in using a form of duress when a man is making an application for a loan and will agree sometimes to most anything. I notice in the application form used by the Producers Commission Association that the [fol. 728] buyer agrees to sell the cattle when they are ready for market through an agency affiliated with the National Livestock Marketing Association. That is part of the exhibit referred to as No. 12 which I understand came in conjunction with Mr. Angle's testimony.

I have talked to the representatives of the various branches of the Government agency. The representatives of the Denver Agency told me that it is distinctly understood that in addition to that agreement it provides that the livestock must be sold at the market, but it has evidently been waived to the extent that if a man does sell in the country he remits the proceeds and they credit him on his obligation with what the stock brought less a commission. We had one customer that has had that experience who did not realize that he would pay a commission if he sold at home. The National Livestock Marketing Association has set up an agency at Fort Worth and engaged my good friend John Burns to run it and they are making a good many loans. They purchased a market agency at St. Joseph and are offering friends of mine money for less than I can borrow it. All through the territory you find this activity very vigorous and aggressive at rates that no old line company can compete with. It has two effects: it makes every farmer or feeder that hears about the Government loaning some man money at 6% feel that his banker who is charging him 8 and have difficulty in keeping the bank open at that, and that his [fol. 729] commission man who is charging him 7 on his feed lot loans and 8 on his stock cattle loans are robbing him and they don't realize that the Government is taking the taxpayer's money as a whole and shoving it to a limited class, provided they will do business through a certain group. He does not analyze the situation but he just looks on the face of it and says "I am being discriminated against; I am being treated unfairly." This is the hardest competition to meet because it is absolutely unfair. If the Government would carry out the provisions of the Farm Board Act with reference to constructive work, ed-

ucation, and things of that kind, there would be no criticism but when they get into the loaning of my money to my competitor at preferential rates to tear down my business, I think that is absolutely wrong. I am inclined to think that it will continue for some time until experience demonstrates the absolute futility of the experiment. I expect to be exposed to the higher unit costs of operation in my business as the result thereof. As competition becomes keener, the operation costs go up.

I have heard of the Inter-Mountain Livestock Marketing Association. It has headquarters at Denver and operates primarily in the Denver territory. Receipts of livestock from that territory come to this market, at Kansas City. Respondent's Exhibit No. 21, which is the marketing agreement used by the Inter-Mountain Livestock Marketing Association, is a contract which states that the man that borrows the money appoints the association or its delegated agents, his exclusive agent, giving exclu- [fol. 730] sive right to sell, market and dispose of all his livestock. If all the producers of livestock in the Inter-Mountain territory signed up that contract and lived up to it there would not be any business for Swift & Henry or anybody else in that territory. There is a similar provision in the articles of incorporation and by laws of the Texas Livestock Marketing Association which is Respondent's Exhibit No. 22. It is in a little different language. It provides that all livestock marketed by the association shall go through a cooperative association.

I had a very interesting and illuminating meeting with Mr. Legge in Washington. He told me that he was looking at the picture in a big way and that he did not expect to reduce marketing costs. He said "What we hope to do is to control the supply, control the flow to market, and control the price when it gets there." He said that the only way they could hope to do this was to enlist the major portion of the producers in some strong organization or organization which they could control. He told me that under the law there was no hope of my organization or any other organization except strictly cooperative, participating in any of *of* the activities of the Board. I think there was some reference made to the Capper Volstead Law in talking to Mr. Legge. We did not go into the detail of the set up of the cooperatives in the sense of the

law. I feel that I am a cooperative though in the spirit of my activities. (Respondent's Counsel reads Respon- [fol. 731] dent's Exhibit No. 23 which is a release of the Federal Farm Board containing extracts from a speech delivered by Mr. C. B. Denman, a member of the Federal Farm Board, in an address before the Missouri Farmers Union at Grant City, Mo., on October 15, 1930.)

Just in proportion as the ambitious program outlined by Mr. Denman succeeds, just in the same proportion will the injury be to our business and all old line companies' increase. (Whereupon Respondent's Exhibits 21 and 22 were received in evidence, it being understood that they were not offered as proof of what the Inter-Mountain Livestock Marketing Association and the Texas Marketing Livestock Association are actually doing but for the purpose of giving the witnesses information as to what would happen if the programs therein outlined or the contracts therein shown are actually put into practice.)

(Whereupon Respondent's Exhibit No. 23, the same being the release of the Federal Farm Board, excerpts from which Respondent's counsel read into the record, was received in evidence.)

There has been a lessened percentage of stocker and feeder livestock coming to market and naturally a greater percentage going from the range to the feed lots direct. There has grown up quite a large number of country operators, that go down into Texas or New Mexico or the west generally and buy these cattle and take them home and sell them. We have had customers that more and more have sold their cattle at home to traders of this kind. [fol. 732] This is reflected in the constantly decreasing receipts of cattle at Kansas City. We do not get as many cattle as we used to here. Each year shows less, even when the total supply in the territory is generous. I do not know as I have a well founded opinion as to the causes. In one group of people they organize an association and put on a big advertising program and did get behind their membership to sort and shape their cattle and developed a superior quality of cattle which they advertised through the corn belt, and put them up and sold them at public auction. In other cases I think there has been little groups organized that not only buy the cattle but finance

them and distribute them around in small lots. There is a group at Des Moines called the Des Moines Livestock Association.

I think the packers pointed the way with their direct buying of hogs in the country and their organization of concentration points. These movements around the market are competitive with the market. I have had some opportunities to check up the relative expense of handling livestock by direct marketing as compared to that on the market. These cattle are frequently purchased by these so called country traders by the head and sold by the head. When they are weighed up they frequently are shown to be costing considerably more than they would have cost bought by the pound, the only way we trade on the market. That movement reached its peak two or three [fol. 733] years ago and has been declining since because the experiences in the country were disastrous to the purchaser as compared to his neighbor who bought on the market. The packers, in their direct purchases of hogs at Kansas City use the open market as the price but they had the benefit of the lessened competition and the lowered price because they had a generous supply at their own plant.

The printed statement in Respondent's Exhibit No. 2 is a very accurate statement of the methods and results of the packers' country operations, and is the method that they pursue now wherever they are operating. They change their territories occasionally. From a competitive standpoint this is difficult competition to meet. The packers put their men in a position where the independent operator cannot compete with him, and when they have killed him, they recoup the losses that they temporarily took in the operation of forcing him out of business. Referring to Schedule No. 2 of Government Exhibit No. 14-59, which is the audit of our firm, I don't think there is a man on that list at that price but what could secure the same or greater salary from some competitor. By those four men that are represented, I simply figure that that was a fair salary or drawing account to put them down at, and their additional compensation which I feel that they could earn should come out of any profits the business might show, but I didn't want to make a set up of their value and upset all the rest of my [fol. 734] organization. I don't think that $7,300 is an ex-

pression of my value to the business of approximately $20,000,000 a year, involving all that I am trying to do. I have received offers of amounts far in excess of that amount in the way of a salary from other businesses.

We don't know when we start the first of the year whether we are going to have a drought or a flood and these amounts are all that I feel safe in holding out to these people. As far as Mr. Henry and myeslf are concerned I even go a little further. We only actually draw $400 a month, with the understanding that if the earnings justify we will draw the rest of the $7,300 at the end of the year, before we figure on any earnings on the stock. Mr. Henry has been at the yards practically 40 years and has been selling cattle over 30 years. His ability as a salesman is best evidenced by the fact that he probably handles twice as many fat cattle as anybody on the market. His services attract a large volume of business because of their value.

The other cattle salesman listed here should be William Byers. Bill has been there about the same length of time. They divide the steer cattle. Mr. Henry sells the corn fed cattle and Mr. Byers sells all the grass fat cattle and some of the corn fed cattle belonging to friends of his. Mr. Frank Byers is the hog salesman. He has been on the market 30 years or more and is very competent. The first employee's salary of $10,546.95 is that of a young man [fol. 735] who has charge of our butcher department. In addition he has a personal acquaintance and his salary is based not only on his worth as a salesman and the work he does but also on the large flow of steer business that comes to us because he is with us. I think he is the most competent butcher salesman in the yards. I think he is more of a general, can handle a bigger volume and get it done right. Taking into consideration the existing amounts that we pay the employee members of our firm, the personnel organization of employees, has now and did have as of the first of the year 1929 an established value to our organization. If by some calamity or some occurrence this entire organization of employees were disbanded and I could not again procure their services as of the first of the year 1929, I know that my business could not have been as satisfactorily and efficiently conducted. I know further that it would show a big shrinkage. It is just like a machine that has been put together and functions properly by adjust-

ment, and one man may be a good man in one organization but not fit in with the other. I think I have got a highly functioning, smooth running organization. I pay my men well and work them hard, and try to work a little harder myself, and in my judgment my business has a going value. If I was to be injured and not be there for six months, this organization, the way I put it together and the way they feel about it, the pride they take in their business, the way they have been treated, their acquaintance with customers, would [fol. 736] carry on. They could not do it indefinitely. We have one man who appeals to one group and another to another, and collectively they appeal. That appeal arises out of the efficiency of the service which they have rendered in the past.

With reference to the working capital set up on pages 109 and 110 in Government Exhibit No. 15, the amount being $16,000, I don't think we could start to operate on that and do our present business. We employ capital in every activity. We have a man down here today who was here yesterday. He started to buy 8 or 10 loads of cattle, get them together, and ship them out at the end of the week. He doesn't know what he owes us till we get through buying. I will often have over $16,000 worth of cattle bought that we have paid for and we have not got a cent. There are times when we are using $200,000 to clear our business. Then at the end of the week we can clear up and get back into the bank. Very often we make remittance of proceeds in the ordinary manner before we are able to collect from the purchaser of the livestock. I don't suppose there is a day in the week that we have sales collected, unless it is possibly Friday and Saturday, but whenever we get our tickets in, regardless of whether we have collected, if we can get the account sales made up before 4 o'clock, we shoot the money out to the country, and in order to do that we have the bank at the yards stay open an hour later than the banks do up town.

[fol. 737] I know the customers appreciate and desire prompt remittance of proceeds. I know the country banker is behind them to prod them all the time. Most all of these cattle are mortgaged.

We have eight Exchange memberships that we either own, the firm owns, or the firm owns and loans to its men. On Exhibit B of the Blue Audits for our firm, the member-

ships were set up at *$4,3000*, and that is not intended to be representative of the present replacement value of those memberships. We have picked them up at times in the past when somebody would get in a pinch and want some money. I think that is what they actually cost us and not what they are worth at the present time. The four memberships belonging to Mr. Henry and myself and the two Mr. Byers belong to us individually. Those other memberships have been carried for a long time. Each is in active use. You could not handle a million or two million dollars worth of property in a forenoon, on the basis where there is not a single transaction that is binding in court unless we had an organization. You would have a "shot gun" market. You could not get justice from the packers. You would be at a disadvantage dealing with the railroads. The man that owns the property is not here and these people that are representing him have got to be in a position to command respect. I was president of the Exchange for several years and I was president of the National Exchange. I had a most interesting six weeks war with the packers at [fol. 738] the time that they attempted to take the stock over to a packing house and have it killed and make us a report on it. The big packers notified us that after a certain date instead of paying for the cattle on the basis of change of ownership at the scales, all female cattle would be weighed to them, driven to the packing house, killed, and they would subsequently report to us the results and pay us on the basis of that report. We took the position that as agents we were not authorized to surrender possession of the property and have its identity destroyed without being paid. There was nearly six weeks that we did not sell them any female cattle. Finally I went to Chicago and met them and we agreed to kill it off and resume business on the old basis. I think you can demonstrate at every market in the country that the Exchange has been advantageous to the producers of livestock in connection with transportation costs. It has helped order buyers and small packers located away from these markets to secure fair transportation rates and services.

Whereupon Respondents Exhibit No. 24, the same being a copy of the arbitrators' award in Dockets Nos. 11, 12, 13, and 14, was received in evidence.

I don't know of any changes in the conduct of our business as a market agency at Kansas City occurring since July 31, 1923, which would tend to cause rates and charges reasonable than to become or be unreasonably high either [fol. 739] in the year 1929 or at the present time. On the contrary, with lessened volume and smaller units and increased detail, the rates that were provided for in 1923 would hardly seem adequate to cover the increased expense of doing business now. I feel that present conditions and tendencies almost preclude in listing young men of integrity and ambition in the business. When we show them the gross revenue less than 1 per cent for handling a perishable produce, subje-t to Governmental regulation and competition, no sane young men would embark in the live-stock commission business today. The whole proposition of Government interference in private business I think is diametrically opposed to the genius of our institutions.

Cross-examination:

I would say in the course of a year I travel 15,000 miles. I make shorter trips by automobile. The trips outside of Kansas and Missouri I make largely by train, and I radiate by automobile from some central point. I have two purposes; one is to get some business that I don't have and the other is to look after some business that I am already carrying, the character of that latter class of business is loans. I meet the man, try to see the security, and look over the physical aspects of his outfit. If it is a feed lot, I look at the supply of feed, and if it is a grass proposition, I look at the grass and water. I never go in a country where I have any loans, if I have possible time, that I don't look it over, although the loan is already on the books. [fol. 740] Generally speaking, our loans are on feed lot cattle or cattle in nearby pastures that are coming to market that have been moved from the range home to the Kansas grass *of* Oklahoma grass on their way to market.

We make no loans for more than six months because the paper isn't eligible for rediscount over six months, but we frequently renew that. Our loans run from 30 day to six months. We charge according to what it is costing us. Our rates now are 7 and 8. We are paying 6% discount for the money. We are endorsing paper so we don't feel that we

can possibly loan it for 6%. We feel that we should have a two point margin to justify the endorsement of paper. The risk primarily determines whether we will charge 7 or 8%. Most of the banks in this eastern territory charge their good customers 6 or 7%. Practically all of the banks west of us charge their customers 7 and 8%.

I would say that 40 days in a year is a pretty close estimate of what I spend in the field. I include in that the time of attending conventions. I go to three or four and sometimes five conventions in a year because I can see in a few days a group of people that would take a lot of traveling and expense to meet.

Not a great deal of time is required in connection with office work on these loans. I know these customers pretty well and I have a young lady secretary that has been with [fol. 741] me 12 or 14 years, and a cashier that has been with me 21 years, and I handle it pretty rapidly. If we are making a loan on cattle bought on the yards, we have the actual figures before us. If the loan is on cattle in the country and for a customer whose cattle we are familiar with, we don't make another inspection. A certain amount of work is necessary to keep track of the loans. In the first place there is work in drawing up the papers, and then we have to keep a file and a record. I have rather an extensive acquaintance with bankers and our paper enjoys a rather good reputation and most of the bankers have an understanding with me that I can use them to a certain extent. I never have loaned to our credit limit. There is not any written rule or regulation or law but it is generally accepted that ten to one endorsement is about the line of safe business practice. I run over and then many times I run clear under.

The loan business varies with the seasons and with conditions. The first item on the balance sheet in Government Exhibit 14-59, which is cash on hand and in bank amounting to $42,397.87, is used both in the loan and in the commission business. I don't think I could determine how much of it is used in each branch of the business. I think it would fluctuate from day to day. There is an item of investments in farms amounting to $52,368.36. They all reflect loans that failed to pay out, and we took the farms to recoup ourselves and in most cases we still have them. We have three farms and one ranch. About the only farm we exercise

[fol. 742] supervision over is the Kansas farm of 800 acres.

On Exhibit C of the profit and loss statement there is an item of country commissions. There is not anyone that handles the country business exclusively. Most anybody in our selling department is liable to come in contact with an opportunity to sell some cattle in the country, and if the trade is consummated we usually get 50 cents a head. In about half of those cases a trip to the country is required. We usually send a man down that is a prospective buyer and he buys them and the owner remits us 50 cents, a head commission. Other times we will organize a little group and take them into a neighborhood that has got a lot of cattle and maybe they will buy them. Somebody in the cattle department usually arranges to go at the end of the week. Occasionally I take charge, personally of these transactions. I make some appraisal trips myself. I appraise the cattle from my idea of value. Sometimes the appraisal is for the purpose of making a loan and sometimes it is with the view of telling the man what his stuff will realize. We handle approximately 5,000 cars of cattle in a year, and there would not be a thousand of these cars of cattle and that we are interested in financially, and in the smaller units we would not see them, but I haven't any figures as to the percentage which we appraise. We appraise a great many cattle and counsel with a great many owners where we have no financial interest in the cattle except to be of [fol. 743] service to the customer and get a sale of the property.

We do not get around to all the customers. We rarely make a trip except upon request and I don't make a third of the trips that I am requested to make. There are a good many factors entering into it. Some men are notorious for trying to use you and then not remember you with any business. I go where I think I will do the most good both for the customer and for Swift and Henry. The customer regards that of value to him and they often times offer to pay you, but we never accept it. Eight or nine of the members of our firm are members of the Exchange, and are all qualified to solicit. Under the rules of the Exchange we can only have 30 days solicitation for any one firm. It becomes a question of distributing the time.

We do not have any budget in connection with our advertising expense. We have adopted some general policies.

We cut out resorting to country newspapers. We practically cut out street cars and telephone directories and all things of that kind. We advertise in the official livestock paper of the Kansas Livestock Association, and some in the Drovers Telegram. We depend a good deal on personal correspondence and personal contact. The object of advertising is to keep ourselves before possible clientage in a favorable way. We do not advertise extensively in the Kansas City papers.

On Exhibit C of our audit there is under the heading of "Deductions from Income," an item for bad debts amount-
[fol. 744] ing to $3,198.50. That is not one item, that is the accumulation during the year. Sometimes there are shortages in loans, or sometimes they are petty counter checks that we cash. Sometimes we have shipped some cattle and they have been refused or there has been a mix, and we have had to resell the cattle. In a broad sense we have most of our bad debts in connection with the loan business. The house at St. Joseph has been in business as a separate corporation at least ten years. I go up there maybe twice a year. They don't make a great many loans. My firm and I, personally, stand behind their paper. We never charge that house with any expense because they frequently forward us business from up there.

I have given considerable thought to the question as to the amount that the firm can reasonably expend for business getting purposes. I think it varies. We are not only competing among ourselves, possibly sixty outfits down here, but we are competing strenuously with at least five markets, possibly six. At times we will have a shortage of a certain class of cattle in our territory and other markets will have a surplus that will justify us in making an extra effort in their territory. When on the other hand, supplies are normal, we would not be justified in going into that territory at all. The additional business should more than pay for the cost of advertising, if it is good business, particularly if you are going into a territory that is normally yours. You must make that particular venture pay
[fol. 745] because you cannot hope to have a continuing flow of business from that kind of a situation. At the present time it would be futile for us to spend any money trying to get stock cattle out of Omaha's territory because Omaha is down here buying stock cattle on the Kansas City mar-

ket, but Omaha has got more fat cattle in her territory now than we have, and we will be justified in working Omaha's territory vigorously for fat cattle.

If a man would bring twice what his salary and traveling expenses were, I would be satisfied, in that kind of a territory. I would be willing to send my man out any time that somebody would guarantee me two for one on his trip. I don't think we lay out anything like that for business getting. I think our traveling expenses for last year, if I remember correctly, were about $8,000. I haven't found that it pays to put a traveling man on the road for the commission business like it does for the mercantile business. The experience of my firm is that the relative figures show that we used to buy less papers, do less traveling, send out less mail matter, and employ less stenographers, but we managed to maintain our volume of business. We did try to make the service bring back not only the customer but bring some of the neighbors, and we try hard for the personal contact. I make it a point to try and shake hands with every customer every day; go out in the yard and look over his cattle; work with him and advise him. The personnel of our firm is a much greater drawing card, and I think [fol. 746] I put a lot more into the business than the majority of my competitors. Mr. Henry has a very strong personality, and the young man at the head of the butcher department has a wonderful personality. The strongest factor in getting business is integrity and confidence of the people in us. If you don't make sales, you would not hold the business very long. I would consider confidence the strongest business getting factor and service the strongest business holding factor. That is what each member of our firm attempts to do.

I have charge of the employment of all the help. Our men average to be longer with us than any outfit in the yards. In filling a position I want a man to be absolutely honest. I want him to be able to stand up under pressure and not to be grouchy. I want him to be a good judge of livestock, have ability and judgment, a good trader and worker. In that answer I have special reference to salesmen and buyers. In a yardman I want a man to be there at 6 o'clock in the morning and stay with a smile until the work is finished. I want a man who is a good mixer, to meet the customers, who knows them when they come in the alley and that feels that he is a partner in the firm. I

call my employees "associates." They have to have experience and if they don't have it they are liable to cause losses for the customer and for the firm. In the office help I want integrity, loyalty, industry and interest in the business. Our cashier has been with us since the day we opened. [fol. 747] Our other bookkeeper has been with us 17 years and the next one 11, and the stenographer 14 years. I reward them according to their ability. I find that the other firms at the market are seeking people of the same caliber because they are frequently offering my men inducements to go with them. That sort of ability is in demand. It is generally accepted that anybody that is working for Swift & Henry can get a job with most anybody.

I had quite a substantial following in the country when I formed this firm. Mr. Henry had been a leading fat cattle salesman for many years and I had been manager of a good sized business and make a good many contacts. We started right off to do a little business. I attribute that to the confidence in our service and the fact that we enjoyed some credit. We extended some financial credit right from the start. We have some very good banking friends. We have been in the loan business ever since we started this firm.

I think that as long as livestock comes under present conditions and is subject to the caprice of the weather and other things and is of a perishable nature you have got to have enough selling agencies to handle the maximum offerings, and that at many times results in a lot of idle ability and power when the minimum runs are coming. I think there can be too many agencies on a market. I think there can be too many of anything. It seems to me that the [fol. 748] greater spread between the top price and the low price of cattle has become more acute with us each year. Today we got a break of 50 to 75 cents a hundred on heavy fat cattle. When I first went into business such a thing as that was never heard of. We got a break of 40 cents on lambs on some kinds here today. They went up 50 cents yesterday and down 40 cents. All these changes have been more or less gradual and until you stop and check up sometimes you do not notice them but they have been more manifest in the last four or five years.

I do not have personal business of any considerable scope outside of the firm business. They have been largely

absorbed in the last two or three years in making the cattle business stand up, I did have at one time. I received a letter from a former customer of ours saying that he was tied up with the Producers Commission Company with a loan with them and that he had to ship to them. It is my impression that the shippers are not particularly pleased with that sort of an arrangement. I think they feel that the 6 per cent rate had quite a few pull backs on it because they were not told about it.

I referred to a salesman in our butcher alleys who has a following and I would say that that young man controls, $20,000 worth of commissions a year. He is game enough to offer to work for me on a percentage basis but under the rules of the Exchange I cannot hire him that way. There might be two or three other men on the Kansas City stock-[fol. 749] yards that can control that much business. He is our head butcher salesman and he sells more butcher stuff than anybody in the yard. He sells a better class of butcher stuff and then we have a man that sells the calves. We have a man that sells the bulls and the cripples and some of the odd cattle. This butcher salesman makes trips to the country to visit his friends. I don't suppose he makes over six or eight trips a year. We had a man in the yard yesterday with five loads of cattle; that is the first of a thousand fat cattle. That is his customer and he went down to see him and go over those cattle a few days ago, down in Oklahoma. He has been with us about 10 years and he has increased his clientele very materially.

We have days that we have as many as 300 distinct sales in the butcher alley and most of this stuff has got to be sold from 9 o'clock to 12. The packer buyers don't do much after 12 o'clock. We have days that we have 200 head of truck in cattle and have come in very small units. We have three men selling cattle in the butcher alley and they sort this cattle up and shape them and decide what they will do with them each morning.

Redirect examination:

We have some losses in connection with the operation of the cattle loan business every year. I don't think there is any question about it, that a larger proportion of our gross revenue had to be devoted to business getting and main-

[fol. 750] taining when the business was being opened up than was subsequently the case after the business was developed. I have always said that we were not justified in going after business and getting it the first time unless we were prepared to give the service that would give us a chance to hold it. It was reflected in our first six months of activity. We spent money on the theory that we were going to get the business and we went in the red and that was all right. In referring to the solicitation of business in the territory that was normally tributary to another market and in saying if the cost of procuring the business was not in excess of 50 per cent of the gross revenue, I consider it reasonable. I had in mind that if we did not obtain that extra volume of business the overhead expense of our organization would run on just the same. Our country commissions are what we call a pick up. We do not count on it in planning our business. I don't think we ever go out to make a trip to look at a load of cattle. Sometimes if we are in a territory and passing by where there is a load and a man wants us to stop and look at it we will do it. We have to have a more substantial volume in sight to justify the time and expense and men with single loads or less do not ask us to come and look at their business. When that business reaches the market it would average considerably more than a carload at a time. It would be less expensive to handle in the yard but somewhat more expensive to handle off the market in view of the appraisal [fol. 750½] work that is done. You can handle a carload of straight uniform cattle or five carloads relatively much cheaper than you can handle one carload of different kinds.

I have always tried to pay my men all the business would afford and then try to secure from them all the possible service that they can render. We have had a good many instances where other firms have offered more money to our employees and they have offered to stay with us. Our payroll for services rendered compares very favorably from the employee's standpoint with any of them here. The history of the organization of the first Exchange was that the practice of docking hogs became so outrageously unfair that the members of the Chicago fraternity went together in a voluntary association. It wasn't anything out of their pockets, but it was a whole lot out of their customers' pockets. There are days when the present agencies

at the Kansas City market are taxed to their capacity and there are many days when they are not nearly utilizing all of their capacity but we have nothing to say as to what agencies shall come on the market at the present time. We do have something to say as to who will come into the livestock exchange. The effect on our market operations with the establishment of these feed lots has been a material increase in our expenses. I think they have substantially increased the returns to our customers. We do not get one penny of revenue from the additional activity that has resulted from the development of these feed yards. I run my expense account in detail in my ledger and I check it [fol. 751] carefully each month. If we find any item is creeping up I commence to dig in and get the details of that. Our market agency has not in the conduct of its private business furnished transportation and legal services to stock men. No overhead organization in connection with our agency furnishes our patrons with such service. I would hate to think of delegating to any agency the control of an industry whose successful operation is necessary to the prosperity of the country when there are no two states and hardly any two counties where the conditions are identical, where the product is perishable, where it is subject to uncertainties and fluctuations of nature and where its control would have to be centered in some one point. It just sounds to me like a wild dream that would result in financial chaos to livestock and agriculture. I think the fundamental oversight in all these considerations is to try to figure those who are engaged in the business and render a personal service as of an average capacity or ability and not recognize that we are in the same position as the doctor in the practice of his profession. Our business comes to us primarily because people have confidence in our ability. We are more like a banker. I receive deposits of 20 million dollars a year in the shape of property which people ask me to sell. I don't think that a man who is entrusted with that kind of a trust and that magnitude of operation should be considered any different than you would consider the highest type of professional man. If [fol. 752] he has to work for compensation with others with no hope of protecting himself in his old age does not

accord with the idea of Government opportunity and justice and fairness.

Recross-examination:

The runs are not as heavy for a short period in the fall now as they were when I started in business. They are distributed since the advent of the cotton seed. We kept a man in our service for three or four years who was ill, who had been faithful, and we paid his salary without a murmur. We have held men who for the time being were not good producers to develop them into producers. Rates and volume of business both enter into what we can pay our employees. If we do no business we would have no revenue. If we had one third more business we would not have one third more expense. In the case of truck in business we have to make an acount sale, a check, and write letters even if there is only one head. We have to write a letter and a check to the dray man. The truck in business has already doubled our office operation. I would not say that it has doubled our expenses. Every check that we write costs one half cent each; every letter we write costs 5 cents.

Our business runs more uniform than any firm on the market and always has. We never let down and we never concentrate on one section. We have tried to fortify ourselves by having business coming from all sections of the [fol. 753] country. The Kansas City stockyards is, in my judgment, the most expensive place in the country in which to carry on a business. We are on the border line between the grass and the grain. The geographical lay of our yards is a mile and a half long and it is narrow. Then there is a great diversity of offerings. We are what you might call an intermediate market. We work on a world of business and when it gets ready to move it goes to Chicago. I think we reach out further for our business. I am quite familiar with the ad which appeared in the Kansas City Star under date of Sunday, December 28, 1930, entitled "Growing Yearly in Importance, Kansas City Livestock Market." I didn't write this copy, I saw that heading which said "Growing Yearly in Volume." As far as the physical construction of the yards it is exceptionally good. They have fine facilities for taking care of cattle, hogs and sheep and good facilities for weighing them. The yards are infinitely better than they were ten years ago because they have cut out the

pockets and made straight lanes and double alleys. In this ad it says that the Kansas City stockyards is conceded to be the most modern, best equipped, and most systematically arranged of any stockyards in the world. Whereupon a copy of this ad, the same being marked Government Exhibit No. 29, was received in evidence.

Redirect examination:

This ad introduced in evidence as Government Exhibit No. 29 was submitted to me by a young man from the Star. Ad writers ordinarily desire to boost the product or the institution or the commodity advertised and they want to get the order for that two thirds page ad. Every bit of additional service means additional expense. It does not necessarily follow that because of these yards and the facilities might be beneficial to the owner of the livestock which patronizes them that they would therefore be less extensive from the standpoint of the operation of the market agency that sells the livestock.

Recross-examination:

The ad shown in Government Exhibit No. 29 is under- [fol. 754] written both by the Kansas City Stockyards Company and the Kansas City Livestock Exchange.

Whereupon the witness was excused.

Mr. James B. Wallace, a witness called by the Respondents, after being duly sworn testified as follows:

I am engaged in the general insurance business, except life insurance. I have been engaged in the business since 1901 and have conducted my own agency since 1906. I have always been deeply interested in our insurance organization and after going through various positions was finally president of our local agents' organization. I have represented our local organization in its contact with the National organization of insurance agents. Our compensation is based on a percentage of our premiums which we handle in our office. The percentage ranges from 10% to the maximum of 25%. That is the gross commission out of which we pay our expenses and conduct our offices and clerical

help. We have had contact with the market agencies at the Kansas City stockyards from an underwriting standpoint. Since 1902 I have handle- a great deal of insurance business for livestock men at Kansas City, especially pertaining to bonds and liability insurance. When I first came in contact with them they were signing each others bonds that required at that time guaranteeing the payment of feed and freight and guaranteeing the delivery of cattle until they had been [fol. 755] paid for in the daily transactions down there. That was what is termed personal surety and in order to relieve each other from that responsibilty they decided to buy corporate surety. I procured some of that business. Bonds were given to the Kansas City Stockyards Company on account of feed and freight and on account of the stockyards company being custodians of the livestock at various times while stock was in the yard. I am still handling bonds of that character.

The rates submitted at that time varied from $2 a thousand to $4 a thousand. A rate was written at $2 a thousand finally and has been in effect since 1902. The rates are higher at other markets. I confined my bid practically to the condition that all agencies place the business through my agency. In fact I did not submit my bid until that was understood. The existence and maintenance of the Exchange organization was the main consideration by my company in taking the rate of premium on these bonds. The livestock Exchange had impressed us very favorably as to their source of control over their members and we felt that if we would confine our writings mostly to the members of that organization a great many of the ordinary hazards would be eliminated. We felt that it would not be necessary to scrutinize the applicant and incur the expense of investigation that is ordinarily pursued in the ordinary transaction of the bond business, and felt that we could have that reflect in the rate. As I remember in 1919 or a year or two [fol. 756] prior to then, there had been a failure to pay for proceeds of the livestock, or failure of livestock commission men at this and other markets, and then the idea originated among some individual firms to add on their letterhead that they were bonded "to whom it may concern." The proposition was put up to us, guaranteeing that members of the Exchange would pay the proceeds of shipments of livestock to the shipper. The bond form finally developed was way

beyond any fidelity or guaranteeing of honesty. It was actually a financial guaranty. I am using that "financial guaranty" as known among bondmen or surety men and surety companies, as a very hazardous undertaking. I represent the New Amsterdam Casualty Company and the Metropolitan Casualty Company. I had great difficulty in getting my companies to entertain the proposition because they looked upon it as a very dangerous proposition. My experience in underwriting the bonds to the stockyards company was an advantage in securing the consent of the company to the execution of this new form of bond. I called their attention to the fact that we had 15 or 20 years' contact with these people and our intimate acquaintance with our applicants.

The existence of the Exchange organization was my main consideration and I discussed that matter quite extensively with the surety companies. We felt that the rules of the Exchange, if their control of the members' conduct was effective, would cut down the risk. One of the considera- [fol. 757] tions that was embodied in entertaining proposal was that we felt that we would be entitled to a man's indemnity of anything he owned or possessed in the way of money or other things, and we felt at that time, with the Exchange memberships being considered worth at least from $3,000 to $3,500 we would cut down any final loss that we might incur, and as it turned out in two or three cases it worked out. We are indemnified by an application that is signed by our principal or applicant to the fullest extent of anything possessed by the applicant and in any payment that we made the company would be subrogated. In one instance we realized $2500 on a membership in connection with a claim. That was sometime with- the last three or four years.

In writing automobile collision insurance there is quite a material difference in the rates as applied to policies that contain what is called a deductible clause. I took up with my companies the matter of the execution of a proposed form of policy containing within it clauses providing for coverage for some but not all of the hazards to which a market agency is exposed in the transaction of its business, as set out in Respondents' Exhibit No. 25. I had considerable difficulty in having them entertain it for the reason that they term it an all risk under all circumstance policy. They

felt that was uninsurable and impracticable. I was not able to get any company to write such a policy. My own companies felt that they were covering, in various cover- [fol. 758] ages, some of the things expressed in this form and as to the others they felt that they did not care to entertain them. They felt that they were covering, and prepared to cover the compensation hazard and the public liability. The public liability refers to the people or general public which may get injured in the transaction of business or the property damage caused by livestock in the custody of the insurer when it gets loose and caused damage to property and persons.

I made an independent investigation of the availability of such coverage as is set out in the first indemnity clause in Respondents' Exhibit No. 25 in other lines of business such as the grain trade. I happened to learn that the grain people had made inquiry as to coverage in handling their gra-n shipments and made application for a bond. It was intimated to that that such a coverage might be obtained with reference to livestock sales on the public market. I obtained a copy of the bond as outlined to the bond people and I have it here.

We look upon the risk of loss arising from defect of title under the liability imposed by law on market agencies at the Kansas City market as more hazardous than the risk incident to defects in title in the grain trade. The grain trade is confined almost to wheat and corn. Livestock is confined to several different classes of hogs, cattle and sheep. I know very little about the situation of the grain trade with reference to losses and hazards that arise in [fol. 759] connection with any defect in title. It occurred to us that the title to wheat is very easy to trace from the time it is threshed to the market. A mortgage may be put on livestock by two or three people or by the same person to two or three different money lenders. There is an increased hazard by reason of the trucks coming along in the night and picking up livestock from pasture and bringing it to market and selling it. At the time the indemnity to grain dealers, outlined in Respondents' Exhibit No. 26, was cancelled, I had gotten up a form of bond which I felt would be applicable to the livestock industry and was urging consideration of it.

That letter was received from the Metropolitan Casualty

Company after the New Amsterdam Company had positively refused. This letter related to Respondents' Exhibit 27, which is a form of bond, or indemnity bond which I drew up on my own motion.

(Whereupon Respondents' Exhibits 25, 26 and 28 were received in evidence.)

Paragraph 3 of Respondents' Exhibit No. 25 refers to public liability arising out of the operation of a business in connection with injury to persons other than employees. That rate is 72¢ a hundred, based on the entire payroll. We have not had regular requests for such policies. Paragraph 4 of Respondents' Exhibit No. 25 refers to the liability imposed upon the assured to any principal for whom the assured acts as broker, agent, or factor, by reason of [fol. 760] such principal to pay the proceeds of such livestock sold.

Cross-examination:

I have been in the insurance business a little over 25 years. I have never been in the livestock commission business, and have never had a financial interest in the operations of the livestock commission business, except as they are related here. I am not an officer of any insurance company, and never have been. The major part of my insurance business is fire and casualty insurance, automobiles, and compensation insurance, fidelity bonds, and court bonds. At one time I had a partner in the business, but I am by myself now. I have had sub-agencies, but now I confine myself to my own practice. I have a bookkeeper and stenographer. 20 to 25% of my business is done at the stockyards. I get 20% of the premiums on the business that I write at the stockyards. That is paid annually. I think the coverage would run from $3,000,000 to $5,000,000 in bonds. Our work in writing shippers' bonds has doubled, as we have to make out an executed copy and furnish it to the Department in Washington. That is just within the last year. In writing these bonds we have to find out something about the individuals. We go over and talk to the banker.

By "financial guarantee" I meant the promise to pay for the proceeds of livestock coming into the possession of the

principal under the bond, and he has had to pay those proceeds to the shipper of livestock. I take it that fidelity [fol. 761] would guarantee his honesty, that he would not steal the money or divert it to his own use, and under a financial guarantee we might have to pay it, under some circumstances where he had no thought of stealing it. I construe the bond to guarantee the payment of the proceeds of the sale of livestock, even though the proceeds are never collected by the market agency. We have paid losses and we collected it afterwards. In other words, we have paid losses and we collected it afterwards. In other words, we have never delayed the payment of claim. I would say that we have had from ten to fifteen losses under these bonds since we began to write them in 1919.

Respondents' Exhibit No. 27 is the one I submitted the bonding companies for estimates. The gist of Respondents' Exhibit No. 25 is embodied in a letter to the company. Respondents' Exhibit No. 27 was submitted to my company the latter part of December. I have one letter pertaining to it, but I would not like for this to go into the record. In this letter I state that I have been in the business at the Kansas City Stockyards since 1902, and that during that time the losses have been almost nil. The main part of the coverage is on stolen or mortgaged cattle. That was addressed to the Metropolitan Casualty Company. It was the reply to this letter that I read into the record this morning, the date of which was January 8, 1931.

(Whereupon, Respondents' Exhibit No. 28, the same be- [fol. 762] ing the letter referred to, was received in evidence.)

The statements in that letter are applicable generally to my experience and knowledge of conditions at the Kansas City market. I write bonds on the Kansas City market for small packers, butchers, and one or two hog feeding outfits. I don't believe I have any public liability policies on the Kansas City market. I have not written any policies covering risks of bank failures. I have written some of the bonds with the coverage contained in paragraph 5 of Respondents' Exhibit No. 25.

Redirect examination:

The rates for fire hazard with respect to furniture and fixtures, and equipment of market agencies having offices

in the Kansas City Livestock Exchange Building is 73¢ on a hundred for the first floor, 78¢ for the second floor, 82¢ for the third floor, 86¢ for the fourth floor, 90¢ for the 5th floor, 93¢ for the 6th floor, and 97¢ for the 7th, 8th, and 9th floors. I had not been writing any mortgage and theft bonds on any company, or any bonds that are comparable with this one set out in Respondents' Exhibit No. 27. The Hartford has been writing those bonds. I meant in the letter that the experience has been remarkable, particularly as our experience in the bonds, and I wish to imply the experience in stolen and mortgaged cattle insurance, although we hadn't written it, had been good. With this letter I was endeavoring in every way I could, and by every method I could employ, to secure the consent of the Metro-
[fol. 763] politan to the quotation of a rate upon this coverage in Respondents' Exhibit No. 27.

Whereupon, the witness was excused.

W. C. Bradshaw, a witness called by the Respondents, after being sworn, testified as follows:

I am a cattle salesman employed by the Moffett Livestock Commission Company. Prior to the first of the year I was employed by the Witherspoon Livestock Commission Company. My work relates to stockers and feeders. I have been selling cattle on the Kansas City Livestock market nearly 15 years. Before that I was manager of the commission house at Wichita. I was manager and part owner for the last eight year-, and prior to that I was bookkeeper and salesman connected with the same firm.

Stockers and feeders must be sorted into their classes, their breeds, and their qualities of various buyers, and there is a very wide outlet for the stocker and feeder cattle, while the fat cattle are confined in their outlet to the buyers who buy for beef, such as the packers here and the order buyers who ship to the packing houses east. The stocker and feeder cattle go to the traders who buy that class of cattle here at the yards and trade on them. They may be sold to the commission houses or order buyers for their customers in the country or they may be sold directly to
[fol. 764] the country man who comes in himself and goes on the open market and buys his cattle.

There are times of the year when the light cattle from 400 to 500 pounds sell for more than an aged feeder weighing a thousand pounds, and then there are other times of the year when the aged feeder out sells the light steer. There are a great many times that the thin cattle and the stocker and feeder class will outsell the fleshy cattle. The light cattle weigh from 400 to 800 pounds and we usually call them stockers, and the cattle heavier than 800 pounds we usually call feeders. The cattle under 800 pounds are usually taken out to carry over and grow into larger cattle, while the cattle weighing 800 pounds and upward are usually taken to the feed lots.

As soon as it is light enough to see to sort, the stocker salesman needs to go to the alley and sort off stockers and feeders from mixed shipments, and sort the various breeds in each shipment, and then sort for age. If necessary, they should be sorted for quality. When he has made his classes of the various breeds of cattle, he is then ready to look these cattle over and arrive at what the value of them should be. In sorting the yardman must hold the gate for me. One man cannot sort alone.

The next thing we do is to arrange about watering the cattle and a good commission firm will take very good care to see that these cattle are watered in a way that will give them a chance to drink all that they want. The next procedure is to see that they have plenty of hay given to them [fol. 765] and that the bundles or bales are shaken up in the mangers so that they can readily get to the hay and eat it. Usually that action is performed by a yardman. While that is going on the stocker salesman rides through these cattle and looks at them very carefully. In the ordinary day's run the salesman is ready to begin to show his cattle probably about 9 o'clock. We get the receipts of the various markets at the bulletin board there in the building.

There are various buyers here at the yards who buy certain classes of cattle, and buyers who specialize in Hereford cattle very rarely will look at Shorthorn cattle or Angus cattle. The salesman knows all the buyers.

There is no obligation upon the buyer to hold that bid good after he has left the alley.

Last Monday we had 16,000 or 17,000 cattle on the yards, running largely to feeder cattle and there were not nearly

enough country buyers or orders in the market that day for these stockers to have cleaned them up. The traders stepped in and bought cattle all day. My firm had 31 loads of cattle that day, running largely to stockers and feeders, and they were all sold. My firm has three cattle salesmen at the present time, but one of them is not going to stay. The reason I left Witherspoon was because they wished to reduce their expenses as much as possible.

When we sell direct that way to a country man we clear [fol. 766] the cattle for him, give him a clearance ticket to the stockyards company, and we make a railroad shipping order for him. Our yardman attend- to the movement of the cattle, in so far as it is necessary. In connection with sales to traders we escape the necessity for finding out his financial ability to pay because we know all of them, and these cattle when sold are taken to the scales and weighed, either to himself or to his broker. Many of these traders pay for their own cattle. More of them pay through a broker.

No written memorandum of the price at which the different lots of cattle are sold is made prior to the endorsement on the scale ticket. The buyer is seldom present when I mark the price on the ticket.

The heavy runs of stocker and feeder cattle are from July to November.

It has been my practice for the Witherspoon Company to make a number of trips during the summer out into the Kansas and northern Oklahoma country and advise with customers, and while I am out there I get a very clear and concise, first hand knowledge of the supply and number that is out there. I get some information about the financial status of our customers as to whether the cattle are mortgaged or not. Usually we trust our customer, if we know him well enough, to tell us those facts. I find that the men in the livestock business, the owners and shippers of cattle, as a general rule, are honest and upright men. After a few years here on the yard we develop a system [fol. 767] which is the best in the way of handling, that is the shortest and with the least work, and with the least liability of any loss or mix up of the cattle.

We also develop a system or routine with reference to records that are kept. After our cattle are disposed of, weighed and priced, the stocker and feeder salesman helps

the other two salesmen to get sold out. As a general thing the force of salesmen stay togther until they are all sold out and the cattle are weighed. After that we go to the office and check the shipments to see that each shipment checks out properly, the number of head that were received. Then the bookkeeper makes up the account sales and we usually check them, and very often it falls to the salesman to write to the shipper a letter telling about the market, if he is not there, giving the conditions of the trading, and any particular points of interest that he thinks the shipper might like to know. There are various other letters that the salesman must write to the trade in the country, answering requests or writing market information which he thinks would be a benefit to his customers.

In the stocker and feeder business their receipts are light in the months of April, May and June. During that period we do work for the shipper or owner of these herds of cattle in connection with procuring pasturage in Kansas and Oklahoma. It has been my practice to make a number of trips into the Flint Hills in the grass country, down in [fol. 768] the Osage country to locate a lease for this man who does not care to make the expense of coming up here. Most of the grass leasing business is done on bunches of cattle of several carlots. No contract is entered into obligating him to ship the cattle to me or to my agency.

Nearly all of the railroads have feeding stations just outside of Kansas City where a great many of these cattle stop to rest and feed over a day or two, and a great many times we drive out there for the convenience of the customer to look at them and see if they should be sorted before they come to the market and not infrequently we take a buyer and sell him the cattle out there.

There has been a great change in the marketing of cattle which has affected the amount of work that has to be done per head or per carlot basis by a market agency in disposing of them. Ten or fifteen years ago cattle came to Kansas City in much larger strings, all of one ownership, all of one brand, and did not need very much sorting. It was not uncommon then to receive a whole train of cattle and sell it at one price to one buyer. At the present time they have to be sorted up and one buyer will buy two or three cars maybe, and there is not nearly as much big strings. They come in single carlots and more mixed

ownerships, and that makes a lot more work. There is also a wider price range between the lower and higher grades than there used to be. The salesman has a wider [fol. 769] price range to keep in mind, and in the higher priced class of cattle the buyers are more particular that their work must be just so because he is paying a big price for it. In view of the larger abilities that the commission man or agency and his salesman must have, and in view of the wider range of his responsibilities and his activities, and the larger volume and kind of work that he must do now as compared to heretofore, and with the cost of living that his employees must pay, and therefore the salaries that the agency must pay his employees, I should think that surely it would not be justifiable to reduce the commissions. In my work in the country I have talked to a number of prominent stockmen that have invariably told me that they would not like to see a reduction of commissions here to the extent that it would curtail our services to them. Their primary interest is in obtaining and continuing to receive a high class service in connection with the sales of their livestock. In my judgment they would look with disfavor upon anything that would tend to reduce the rate at the expense of the service.

Cross-examination:

In connection with my statement in regard to the larger volume and responsibility of work, I had in mind the mixed variety of shipments, the many more classes in each car, and the many more ownerships in a day's run than we used to have. The yardmen in my alley do not sort any at all prior to my arrival at the yards. The three salesmen of [fol. 770] us go to the yards every morning with the first yardman. Two of us sell steer cattle, and the other one sells the butcher stuff. I am not an owner in the Moffett firm. Probably I spend three months during the year in the country visiting customers in the various work of appraisal and grass leasing, and all of that sort of thing. I do not visit all of my customers. I determine by correspondence which ones I will visit. If they have some cattle that they want advice or accounts in regard to, we try to make it a point to get to them. We try to get to all of them that request us to come.

I sold two loads of fat cattle yesterday. We have tele-

phones out in the yards so we can communicate with the office and with people in other parts of the yards. We know approximately about what is being carried over each day, both in first hands and in second hands.

Last Monday we had 31 cars, and we sold all except ten head that day out of two different shipments. The three of us sold them. In addition to those we had three loads of corn fed cattle, and I sold all three that day. It was a rather large day's business for this firm. I have a following, or clientele, that ship their livestock now to the Moffett Company instead of Witherspoon. I do not know how large a following I will have. I would like for all my friends to stay with me. They are people that I have been acquainted with and have known in my work for a number of years. We also had about 17 head of trucked livestock [fol. 771] last Monday, and I think we had eight account sales for truck shipments that day.

Redirect examination:

The widow of Mr. Moffett has considerable knowledge herself of the office work incident to the conduct of a livestock commission business.

Recross-examination:

I have been looking after pasture leases for a number of years. Our service does not end when we lease this grass. Last summer I went through the strings of Texas cattle we had on Kansas grass seven times to check the water and the grass, and to see that the cattle were being properly cared for. All that service was in addition to the grass leasing and for the interest of the customer with no charge. The customer leaves that largely to the commission firm, and we do the cutting and shipping at the time of marketing. The responsibility of a salesman is multiplied in proportion to the number of cattle that he has to sell. A salesman is at his most efficient point when he has enough cattle so that he knows the value and condition of the market. I should say that a salesman selling a number of loads of cattle each day would be better posted and in a better position to get the most for his customer, on the average, than the man who has one or perhaps two loads of cattle a day, and maybe one or two loads of cattle a week, but there is a point at which the efficiency of a salesman is very ma-

terially reduced when he has so many loads of cattle that he cannot give any of them the proper attention, proper [fol. 772] care, and proper sales ability. I feel that our force was able to sell the 31 loads last Monday efficiently. We were down there Sunday all day arranging the pens and feed, and getting organized for the Monday morning work of getting the cattle ready to show and sell. We had almost all of them in their separate classes, ready to show the buyers, ready to trade early, and had feed by them all night. We had to do some sorting on Monday morning.

Whereupon the witness was excused.

FRANK WITHERSPOON, JR., a witness called by the Respondents, after being duly sworn, testified as follows:

I have been engaged in the livestock commission business at the Kansas City market since 1902. I am vice president of the Witherspoon Livestock Commission Company, which is a corporation. The stockholders of the corporation are Frank Witherspoon, Graham Witherspoon, Geo. W. Sanders, Jr., and myself. All of these men are actively engaged in the conduct of the livestock commission business. The president of the company, Mr. Frank Witherspoon, started in the commission business in 1897. Before that time he was engaged in the handling of livestock on the ranges and feed lots. He moved to Kansas City and formed a partnership with a man by the name of Timmons, under the title of Timmons and Witherspoon. This partnership lasted until about 1901, when Mr. Witherspoon sold his interest in the partnership and worked for Evans, [fol. 773] Snider, Buell for a year. Then he started in business for himself, and has been actively engaged in the commission business at Kansas City and other markets since that time. Mr. Geo. W. Sanders, Jr., started his activities during the year 1901. He worked for the Cassidy Southwestern Commission Company, a Fort Worth Livestock commission company, and the Neil McMullen Livestock Commission Company, which, during 1914, was absorbed by the Witherspoon McMullen Commission Company. The Witherspoon McMullen Commission Company continued under that name until 1922 or 1923 when the name was changed to the Witherspoon Commission Company.

Graham Witherspoon started his activities with our company during the year 1914. After I graduated from school in 1902, I acted as an office boy, or bill clerk and bookkeeper. I did all the office work for my father for about two years, after which I started to run trains. I ran trains in the mornings and kept books in the afternoon for about a year to a year and a half. Later I did general yard work. During 1908 I began to sell a few cattle, and by 1910 I was selling a good many of them, at which time I was transferred to Oklahoma City to take charge of our office at that market, where I sold cattle, hogs, and sheep for a period of time. I was in Oklahoma City until 1913, at which time I was transferred back to Kansas City, where I have been selling cattle a good part of the time in one division or another. I have also been active in the office work, and in the loan department when our company was [fol. 774] making loans. It is my personal opinion that the loan business carries with it quite a hazard. Between about 1919 and 1922 our company lost many thousands of dollars. I do believe that the operators at a market should do all that they can to secure loans for the patrons, but the loan business within itself carries with it such a hazard that I would not care to indorse the paper.

During 1929, Geo. W. Sanders, Jr. spent practically all of his time selling fat steers. I divided my time between the sales alleys in the cattle division, and in the office work. Graham Witherspoon spent a good part of his time selling calves, and the balance of it was spent in business maintenance. Frank Witherspoon had charge of what loans were made, together with general executive duties of the company. The most of our business in the fall of the year originates in Texas, Oklahoma, and from the pastures of Kansas. I have served on a good many of the committees of the Kansas City Livestock Exchange, and have been president of the Exchange. During my official connection with the Exchange, I had occasion to make a study of what is known as direct buying by packers. Before I was elected to the presidency of the Exchange a study was made by a committee of the direct buying question as it related to the shipment of hogs made to the Mistletoe Stockyards, owned and controlled by the Armour interests. It was thought by the committee that Armour encouraged these direct shipments of hogs to the Mistletoe yards for the purpose of

[fol. 775] obtaining a sufficient supply of hogs in order to pound the public market with the idea in mind that they could mark their hogs on the public market basis. The slowness on the part of Armour buyers in their buys on the market and their general conduct showed to us, without a doubt, that that was their purpose. It was also shown that the supply at Mistletoe was increasing and that a good many hogs that should come to this market went to Mistletoe. It looks to us that this direct business has increased to such an extent that it enables the packers to take advantage of it. The Kansas City Livestock Exchange has considered this direct buying a menace, and it filed a complaint with the Department of Agriculture against the Armour Packing Company. That complaint was under Docket No. 1. About that time the National Livestock Exchange was contesting the constitutionality of the Packers and Stockyard Act. The Kansas City Exchange has always felt that the Packers and Stockyards Administration had a right to supervise our market, and we felt that we were acting within the law when we took advantage of the law in filing a complaint. It has been the policy of the Exchange here to cooperate in every way that we can with the Packers and Stockyards Administration in assisting them to enforce the Act. A hearing was held on this complaint and a decision was rendered by the Secretary.

Paragraphs two, three and four, appearing on page four of Respondents' Exhibit No. 2 relates the methods that are [fol. 776] used by the packers in buying their hogs direct.

As a result of this proceeding, entitled Docket No. 1, the private yards of the packers were not posted as public markets. From a competitive standpoint, it is my opinion that this method of acqu-ring livestock for slaughter by packers has a direct effect upon the cost of operation of market agencies at Kansas City, and, in fact, the packers can, through this method, secure a supply of hogs and use that supply in depressing the open market. It has a further effect upon the market in the fact that the volume of directs handled by these packers should, in my opinion, come to the market, which would increase volume and reduce unit costs.

The complaint filed by the American National Livestock Association entitled Docket No. 12, was filed just prior to my administration as president of the Exchange. Just

after I was elected president of the Exchange, Mr. J. H. Mercer, secretary of the Kansas Association, discussed this complaint with me. Mr. Mercer was of the opinion that not only rates should be considered, but methods and practices of the Kansas City market should also be considered. After some correspondence a conference was called of the representatives of the different Associations throughout the Kansas territory, and representatives of the Packers and Stockyards Administration. Some amendments were proposed, and they were immediately put into effect by the Kansas City Exchange. The matter of rates was left to [fol. 777] arbitrators. A stipulation was drawn up to the effect that the books of commission agencies would be accessible to the Department, together with any assistance that the market agencies could render in helping to gather the necessary information for the investigation of rates. Representatives of the American National Livestock Association signed a stipulation. The rates set out in the decision of the arbitrators have been in effect in the transaction of the business of the Witherspoon Livestock Commission Company since that time. In my judgment, nothing has occurred since that would cause rates reasonable at that time to become unreasonably high at the present time, or as of 1929. I think the reverse would be the case, on account of the fact that the volume is less, and other conditions around about the business require better service. At that time there was not such a demand in the handling of these straight car shipments as they related to grass leasing. At that time a good many of the shippers from the Southwest secured their own grass. Another thing that enters into the case, as compared with them would be this demand on the part of the packers to order lotting numbers, and other additional yard work that we did not have to contend with at that time. When this award was made we did not have as strong a competitive situation on the part of the cooperative as we have now. At the present time we are confronted with Farm Board competition. The operator spends money in assisting the patrons of the market [fol. 778] in getting credits for him, and in other ways, and then through the unfair competition of the Farm Board, loans are obtained by the patrons, which means an absolute loss on the part of the operator on account of the time spent and the expense incurred previous to a loan. The increase

in the proportionate volume of hogs that passes around the market to the packers for local slaughter will work to the disadvantage of the operator in his cost of operations.

I was president of the Exchange when the complaint was filed in Docket No. 39 concerning the controversy between the Exchange and the Farmers Union Livestock Association, the Producers Livestock Commission Association, and the United Shippers Livestock Association. Dell Hubbard was a member of the United Livestock Shippers Association. He misused, or rather misapplied funds of patrons to his company, and the Exchange expelled him. He was then operating as the Dell W. Hubbard Commission Company.

Prior to the formation of the Kansas City Exchange around 1886, we had what was known as the shotgun market here. After the Exchange was formed, the hog docking was put into effect, which corrected some of the evils. I can say that considerable time has been spent by the members of the Exchange over the last 46 years evolving methods and practices that would be helpful to the patrons of this market, and would be economical and efficient from the standpoint of the agencies themselves. These methods and practices have come into use through evolution as con-
[fol. 779] ditions change. I have prepared a statement of a system of established and proven methods employed in the conduct of a typical market agency business at Kansas City. They are described in the Exhibit which has been marked for identification as Respondents' Exhibit No. 29.

(Whereupon, the witness proceeds to describe in detail, and read from the Exhibit with respect to the practices and the forms used in the conduct of a commission business. Inasmuch as the Exhibit speaks for itself, testimony from T. 4702 to T. 4728 is not here set out.)

All the forms referred to and contained in Respondents' Exhibit No. 29 come under my personal observation in connection with their use in the commission business. The statement descriptive of methods and practices, appearing on pages one to 28 of this Exhibit, was prepared by me. In this statement in Respondents' Exhibit No. 29 certain yard locations are referred to. The purpose of the blue print, which has been marked as Respondents' Exhibit No. 30, is to show the particular locations of different places in the yards where the operators, or market agencies come in con-

tact with methods and practices in yard operations. The selling yards of the commission agencies begin at Alley 5 and extend to the south along Genesee St. to the extreme south end of the yards, or Alley No. 39, and west to practically the State line, which is the 3d alley from the east side of the yards. In looking at this chart it can be seen [fol. 780] that the main selling yard of the market agencies is long and narrow in construction, which indicates that great distances have to be traversed by the market agencies within that particular area.

I asked Mr. Roberts to figure out the one million seven hundred and fifty thousand variations of grade and quality, as shown on page 10 of Respondents' Exhibit 29. I would say that in some cases the variation would be slight, but the reason I referred to it was just to show the approximate number of variations that would enter into sorting and grading.

On schedule 2 of Government Exhibit 14-73, the designations of the salary under the heading of "office", that is descriptive of employee No. 4 refers to my father's salary. No. 1 refers to mine; No. 2 to Mr. Sanders; No. 3 to Graham Witherspoons' salary. I am certain that some of the owners could get more money in other work or in similar work. In connection with those amounts were considered such dividends as might or might not accrue upon the stock as supplementing such compensation as was indicated here for personal service actually rendered. The capital of the Witherspoon Livestock Commission Company is $10,000, and the surplus is $34,644.52. This capital and surplus were built up since the Witherspoon Commission Company was organized but the Witherspoon Commission Company assumed some very questionable paper of the Witherspoon McMullen Commission Company. Fortunately some of that [fol. 781] paper was collected and naturally reflects into that surplus. We also contributed personally to the capital stock from our own funds in the organization of this company.

My firm sends out market letters. We have an index file down at the office that shows the names of those who ship to us. We take that list of customers and add to it the names of the prospective customers and send to the combined list what we call a market letter. In that market letter we try to give the trade helpful facts so that the trade

can by reading it judge the market conditions. We usually include crop reports, economic reports, and any other helpful information. In the operation of our business we endeavor to keep expenses for business getting and maintaining, as well as all other forms of operation expenses, at as economical a figure as it is possible to do.

If we would rely on a capital of around $7,000, as shown on page 110 of Government Exhibit 15 for firm No. 73, to run our business, we would be broke by August every year because the nature of our business is such that we have a loss on account of the fact that it is seasonal, and that loss varies all the way from $5,000 to $10,000 before we begin making any money, and that is not all of it. There are other items that would have to be considered in handling invested capital or to establish credit that would necessitate considerably more money than the amount you referred to. Mr. Roberts came into our office and asked us for an analysis of what capital we need or require, but I was unable to [fol. 782] give it to him, and the reason was that it happened through 1929 that I was director in an uptown bank and they did not keep any such analysis or charge us on any floats. We carry on our books furniture and fixtures at $1,371.29 as of December 31, 1929, but that by no means represents the fair value of the furniture and fixtures. An appraisal has been made of the furniture and fixtures. The Witherspoon Commission Company owns six memberships in the Exchange, and each of the stockholders use four of these firm-owned memberships, and two of our salesmen use the other two.

The item of $6,500 appearing here on this balance sheet on Exhibit B of Government Exhibit 14-73 is not representative of the replacement cost of the memberships which I mentioned. I did not rent one of the six referred to because the firm owns those six memberships but we rented a membership for Mr. Tom Swartz who is in our employ. I believe the rental on Mr. Swartz' membership is $20 a month, and according to the statement on Exhibit C it would look as if there is a difference of $20, but my guess would be that we probably paid one month in advance, which would make that difference. I did not examine critically this blue audit after it was made up.

Our company offered livestock to the Producers Commission Association and the Farmers Union Livestock Com-

mission Company at any time their buyers appeared in our alley and wanted to buy. In fact, during the period from [fol. 783] 1923 to 1927 we sold cattle to the Producers when they were not members of the clearing house. We had to present our bills to them at their office, and of course we demanded a cash payment. I recall definitely one sale of a considerable amount that we made in that manner and collected in that manner. There was greater difficulty attached in making our collections in that manner than in trading with ordinary agencies on the market. When we trade with members of the clearing house it is very easy for us to make our collections, especially for our firm which is located on the same floor with the clearing house. When the market practice agreement was signed by those firms, trading with reference to those firms was put on a sound basis.

Cross-examination:

Referring to Schedule 2 of Government Exhibit 14-73, cattle salesman No. 1 is myself. I am registered with the Exchange as a cattle salesman because I spend a good part of the morning in the cattle alley. I do not actually sort or grade cattle but I am in the different alleys conferring with the salesmen and helping consummate trades. I work in the butcher alley, the stocker and feeder alley, fat alleys, and calf alleys. At times I would say that I actually consummate the sale because the salesman comes to me and says that he is bid so much on a bunch of cattle and asks me to go to the pen with him. I go into the pens with him and we together decide that it is either too low or not enough, and at times I confer with the customer before the [fol. 784] sale is consummated. I don't do that every day. During the rest of my time I am in the office on the executive side of the business or working on business maintenance. Some years I spend much time in the country and others not so much because conditions have an influence as to the time I go to the country. It depends on the demands of the trade. I do not make what is generally known as regular soliciting trips. When the patrons of our company write me and ask me to go down in their particular country to look at cattle, I go. Of course, while I am down there I might look at other cattle. That is what I call an appraisal trip. The longest trip I make on appraisal work

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is in the early summer, but I am making those trips during the entire year. In the early summer I go down into Texas or far off points.

Cattle salesman No. 2 is George Sanders, who is our head salesman in the steer alley and more or less directs the practical operations of the yards and has charge of the yard force. He spends the major part of his time in the actual selling. He does some appraisal work but not nearly so much as I do.

Salesman No. 3 is my brother who is the calf salesman. He devotes the major part of his time to selling calves, and some of his time in office work and some of his time in appraisal work. Appraisal work is done on all classes and grades of cattle, as well as on sheep and hogs. We do it whenever our customers request it. In our case it would be [fol. 785] rendered only upon request in 90 per cent of the cases. Our calf salesman has been engaged in the business since 1914. He started right here in the yards doing that work. He assisted in train running. He continued in that capacity about a year and then did general yard work. He became an owner about 1919. He continued as a general yardman for two or three years and then began to sell odd and end cattle, crips, and things like that. He did that just a short time and then we worked him gradually into selling the calves. During the time he was selling calves, he also assisted in the yard work. During all these times he drew salary from the time he started.

No. 4 is my father and he devotes practically all his time to the office duties in executive and managerial work. Non-owner cattle salesman No. 5 is our butcher salesman. He has been with the Witherspoon organization since around 1913. He has been at the Kansas City yards since 1908.

Cattle salesman No. 6 was Mr. Bradshaw who sold stocker and feeder steers. He is not in our employ at this time, and my brother who was selling the calves has been promoted to the position of stocker and feeder salesman. Mr. Albert Sanders, who was our yardman, now sells the calves for our firm. It is the policy of our company, as well as many other companies, to promote those who are qualified to be promoted. We did not take on any new help when Mr. Bradshaw left us, and the reason we are doing this is because we are trying to run our business just as economically as [fol. 786] possible. The brother of our head yardman went

through the training of train runner, general yard work, and was promoted to the job of head yardman. One day he fell from the top of a fence and hurt himself so we had to provide a position for him in our organization. We let him be an assistant to our bookkeeper.

Employee No. 7 is Mr. T. C. Swartz who is a cattle buyer. He gives his time to buying and some to office work and appraisal work.

Employee No. 8 is our hog salesman, G. O. Foster. He came to the yards sometime during 1903. He started as a train runner in the cattle yards. He worked up to the general yard work and was transferred to the hog yard. All this was done while he was in the employ of another firm.

Employee No. 9 is designated as a cattle yardman. He is the head yardman who has been stepped up to calf salesman. Employee No. 10 is the one who has been stepped up to head yardman. Employee No. 11 is our jack pot yardman. He devotes practically all his time to jack pot transactions. He helps some in load outs. During 1929 we were having a little trouble with train runners and we had to let one man go, and part of that time we used some of our regular yard help in filling in that period. The purpose of doing that was to keep down our expenses.

In connection with employees Nos. 15 and 16, one of them [fol. 787] got sick and we had to hire another one. Employee No. 17 is a bookkeeper. Our bookkeper who had been with us about 23 years left us in December, 1928, and we hired a bookkeeper who had formerly been with the National Commission Company. Employee No. 18 is our stenographer who has been with us since 1918. She handles the telephone, receives instructions from the yards regarding car orders, and handles some of the telegrams that are received by the company. Employee No. 19 is a clerk who was with us about six and a half months.

On account of our seasonal business we usually get along with one bookkeeper during the early part of the year and during the latter part of the year we hire temporarily a clerk to assist him. The same situation is true with respect to employee No. 20, who worked just one month. Our night yardman is paid on a basis of fifty cents a car for the cattle he receives during the night, and he also works for other firms. We pay the head yardman who handles our night business from the drive in chutes on a basis of five cents a head for each bunch up to bunches that would yield $2.00,

and there is no charge above that. On the drive in cattle we pay ten cents per head, with no limit. A man by the name of Duncan handles our drive in hogs, and a man by the name of Crow receives our drive in cattle. During the fall months we have a heavy business so we hire extra yardmen to assist our regular employees.

Our surplus has been accumulated since about 1922 or [fol. 788] 1923, but that is not a surplus accumulated through the profits of the commission business. It so happens that we were fortunate in realizing a profit out of some of the assets that we bought from the old firm. Our volume in 1922 and 1923 was much larger than it is now.

Referring to page one of Respondents' Exhibit No. 29, our company has had many experiences that would come under the subhead A under the subject of hazards. I am unable to tell the amount of loss that our firm has sustained since it was organized under this corporate name on account of the first hazard mentioned. Several years ago we received a telegram from an eastern packer to buy some cattle for him according to a certain description. We bought those cattle according to that order, shipped them to Boston, and he wired that he would pay the draft. The buyer proceeded to kill the cattle and a few days later he turned down our draft. We hired an attorney in Boston and attached the beef until we got the matter straightened out. We lost several hundred dollars on that transaction but I cannot recall the exact amount. I don't remember the date but I think it was around 1923. Just recently a man in Nebraska wired us to buy some hogs for him. We wired the bank and the bank wired back that the party could pay the draft all right, and we 'phoned this buyer and he agreed to pay the draft. The next morning we wired the bank to find out if it would pay the draft, and we received a message from the man for whom we were [fol. 789] buying the hogs telling us to keep them. The market was declining and we had some difficulty in selling the hogs. Figuring the loss on the hogs and the time spent in the resale, the sum total of the loss was $85.00. In 1925 we shipped some heifers to a party in Cincinnati. When the heifers reached the point of destination the market had declined and the purchaser refused to pay the draft. We had to have the heifers shipped on to a nearby market and the loss was around $200 or $250. The loss on the shipment

of cattle to Boston was around $500. I cannot recall any other experiences where I could relate anywhere near the loss. Most commission firms do everything they can to avoid that hazard when they purchase livestock. They wire to find out if the bank will pay, but the trouble is these banks do not always pay. We have never required the money to be put in the bank here in Kansas City before we fill the order. I think if we did we would be unable to fill any orders because the country is more or less sensitive over a situation like that. In my opinion, the buyer would not plank down the cash or the equivalent cash before the order is filled. He is used to doing the business the other way. We have to take the chance to stay in business. I have not had any losses on account of the failure of big packers to pay for livestock sold, but I have been scared to death one or two times. Recently an item of one of the big packers was held up for two or three days, but that is very unusual.

[fol. 790] With respect to the next hazard which is the guaranty of title to all livestock sold. I do not recall any losses that we have had on stolen cattle, but we have had expenses that are chargeable to that particular hazard. About two years ago there was some cows shipped here from out in Kansas and we did not have the mortgage and theft coverage. It looked to us as if there was a mighty good case against us and we had to hire a lawyer which cost us $150. We carried mortgage and theft insurance from about 1919 to about 1925 or 1926. Then we did not carry it until after this incident happened to us which I have just related.

With respect to the next hazard under the heading of mistakes made in freight charges or other items in office work, that particular item exists in the commission business. We have had some experiences where railroads have undercharged and where we have been threatened with suits. There have been suits placed in judgment against us, and there have been items where our bookkeepers have made mistakes and over remitted to customers. I cannot recall the exact amount of them, but they exist. We always attempt to adjust mistakes made in remittances, but we do not always succeed in settling it. In a good many cases we do make a settlement. Since I started this particular testimony, I recall a case where a man shipped to us and

represented to us that the cattle were of a certain weight and we paid the drafts. That particular shipment lost a [fol. 791] thousand dollars. We tried to collect that item but we have not gotten it yet. I do not remember the year that it happened. We try to collect them for two years, and if we cannot secure a man's note, we might as well assume the loss. Those instances do not happen every day, or sometimes every week.

With respect to the next item of collections of livestock where banks may fail in the course of collection, our agency has not had any losses on that item since 1923, but other agencies have.

With respect to the next item under the heading of sale or purchase of diseased livestock, our particular firm has not had any losses under that particular item, but I do not want the reviewer of this case to get the impression that our firm's experience is the similar experience of all firms on the yards. The hazard exists. I remember some years ago we shipped some cattle to a man in Missouri and before the draft was paid the other part of the cattle remaining here were condemned for scabby, and the farm in Missouri was quarantined. Our draft was turned down and we had to make an adjustment. I think that was along in 1920 or 1921. The adjustment cost us a few hundred dollars, but I forget the exact amount. I think that the hazards related in this particular paragraph are just a part of the business and even though an operator shows due diligence and care, they are present just the same and I think that every operator at Kansas City does his best to [fol. 792] eliminate as many of these hazards as he can. I would say that management has something to do with any enterprise, but I want it understood that these hazards are ever present. It is my observation that these men start in and work at one position for these stated periods and then are stepped up to the next position.

According to the rules of the Exchange the individual operators cannot broadcast their sales, but broadcasting is done by the Kansas City Exchange three times a day, and the members of the Exchange give to the Secretary actual sales that have been made, and he broadcasts this information to the country at large. I feel and know that the policy of the Kansas City Exchange has been to reduce expenses as much as possible because the members of the Exchange

realize that if the commission agencies were left to spend money at will, that might reflect into the commission rates. That policy relates on back for many years. The policy of the Exchange has been to keep all unnecessary expenses down so that the market agencies could render a high class service, especially so far as those expenses related to items that were not very important so far as actual service on the yards was concerned. It is true that if you were to eliminate all those expenses there would be a reduction, but it would be very unwise to eliminate the service that a customer to a market could have and, as the members of the Exchange have always contended, we are to perform services for the patrons of this market and we must incur [fol. 793] certain expenses in rendering certain services and although it might reduce and will reduce certain items of expense, that will not amount to a lot but it will amount to a lot so far as patrons of the market are concerned in giving him certain services that he is entitled to. The market agencies could enjoy the benefit of the curtailment or elimination of certain expenses but they do not enjoy it as a whole because if they would eliminate these expenses on the side of the ledger they might be doing the thing that would reduce their gross earnings on the other side to an equal amount. I mean by that that they do reduce expenses but by performing an inferior service to the trade, but to the extent that we have entered into an arrangement whereby we curtail certain expenses, it is the combined judgment of the market agencies that you do not curtail the service. If we would go still further and curtail other expenses, we would affect the service and that is what we are here for. To the extent that we have curtailed what may be considered unnecessary expenses, the market agencies have benfited, but I want to add, that, in my opinion, this benefit has been passed on through rates to the patrons of the market, or expressed, otherwise the agencies in the last analysis do not receive any direct benefit, as this benefit is passed along.

The market agencies at the Kansas City market are doing their best toward efficiency. With respect to the timely provision for labor, referred to on page 5 of Respondents' [fol. 794] Exhibit No. 29, I want to state that volume within itself is not the whole controlling factor. There are other elements besides volume that must be considered, namely,

the kind of business done, the way the livestock is received at the yards, and removed to the sales alley. If the trains come in all during the day, that situation would affect the amount of labor necessary and the bad weather conditions have some effect on the amount of labor necessary, and too spasmodic receipts or seasonal business has a further effect upon the labor necessary.

Redirect examination:

The cost of handling livestock, from my investigation in 1929, was around .85 of 1% in Kansas City, and I know it to be a fact that the cost of handling other commodities is higher, and that is the reason I put in the statement on page 18 of Respondents' Exhibit No. 29 to the effect that the market agency service is incomparably greater in value to the user than the amount paid therefor. As to the statement in regard to the unavoidable increase in expenses, by reason of the long and narrow construction of the yards, it should be a matter of common sense that there would be conflicting inter yard traffic more than when the yards are constructed more in the square shape. This long and narrow construction necessitates extra time spent by salesmen in hunting buyers, and it causes extra time on the part of the buyers in hunting particular lots of cattle that suit their demands. It takes a longer time in training running. [fol. 795] At Wichita the construction of the yards is more in a square shape, and the handling of different species there does not require the time of the agencies in driving them through the yards, or in handling them through the alleys where there is not so much conflicting inter yard movement as at Kansas City. The yards there are much smaller, and the livestock can be handled with greater dispatch than at Kansas City. I am unable to recall all of the claims that have arisen on these hazards referred to on page one of my narrative, Exhibit No. 29. I think it would be impossible to cope with the situation unless we had this organized system that has been referred to in this Exhibit No. 29. I have tried on several occasions to see if we could get insurance that would cover all these hazards, but have not been able to do so. We carry liability, public liability and property damage insurance on my personal automobile. I have never had any accident in the operation of my automobile wherein any person was injured. I do not use my

past experience in respect to accidents as a guide in determining whether or not I should take out public liability automobile insurance. I consider the recent action of the Exchange in prohibiting expenditure of money by market agencies for subscriptions to market papers in line with the other rules of the Exchange regulating competitive expenditures. The elimination of that expense has been criticised by some of the patrons of the market who ship to [fol. 796] other markets where they are incurring that expense. I think the reduction of expenses in that particular instance has in a degree affected the volume of business that would otherwise come to the market. According to the information given to me by some of our employees, some Nebraska shippers have shipped to other markets on that account. The prohib-ting of broadcasting by radio by individual market agencies is also in line with the general policy to reduce expenses.

With respect to the responsibility and work that attends the execution of the service by the owners of the business as compared with the employee who has no interest in the business, my opinion is that the non-owner or employee, is not called upon as frequently as the owner in performing general services. The owners of the agencies usually work early and late. In my own case, on a good many occasions I have been compelled to spend a good part of the night in performing the services in the way of answering long distance calls, and so forth. I think if an owner is willing to get up at around five o'clock in the morning and work until one o'clock at night, if necessary, he is beginning to qualify himself as a commission man. The expense of our firm on account of the kind of business we handle, in my opinion, is larger than the expense of a firm that is operating in what is known as a native territory, because it just costs more money to travel those long distances. We would have desired to increase some of the salaries that are paid em- [fol. 797] ployees if we would have done so within existing income, but it has been our policy to keep our expenses down just as much as possible and retain our personnel. Some of the employees of our company, in my opinion, could have at times received more money from other institutions. According to Government Exhibit 14-73, my firm paid a $6,000 dividend in 1929. That dividend was not paid out of the earnings of the commission business, but out of

the surplus that was earned through the sale and liquidation of property that we had sold in handling the old deal that I referred to this morning.

All education that I had was in High School, and Commercial College education, and legal education.

Recross-examination:

We try to run our business just as efficiently as possible and feel that if our company during 1929 had earned a little more money than they did, we probably would have advanced the salaries of our employees. We are very careful in advancing those salaries, because we want to keep our expenses down just as much as possible. I have not noticed a lot of competition for services of our men as far as our men are concerned. Mr. Sanders was offered more money to go with another company, but he stayed with our company. At a reasonable salary I think an efficient salesmen or an efficient yardman can get employment. Service is what attracts shippers to a market or to a market agency in my opinion. A good many times on Friday and Saturdays we put in less than eight hours a day at the market.

[fol. 798] (Whereupon the witness was excused.)

C. G. Myers, a witness called by the Respondent, after being sworn, testified as follows:

I live in Chicago, Illinois, and I am a practicing attorney. I have been engaged in the practice of the profession of law since June, 1914. During the last eight or ten years I have devoted a great deal of time to the problems involving livestock commission merchants. I have been employed for the last ten years by the Hartford Fire Insurance Company in defending commission merchants for claims and conversion suits, and other suits brought against livestock commission merchants. I have represented quite a few commission merchants in suits brought against them, in which they have no protection or liability. I represent the Citizens Insurance Company, and have been employed at times to defend different litigations for the Niagara Insurance Company, the Connecticut Fire Insurance Company, the Citizens Insurance Company, the St. Paul Fire and Marine,

the National Fire Insurance Company, and several other insurance companies. My practice has taken me into a great number of the different states and jurisdiction in the Middle West. I think I am familiar with the law in these different states. The Hartford Fire Insurance Company writes a policy insuring the livestock commission merchants, according to the terms and conditions of that policy, [fol. 799] against losses from receiving and selling mortgaged or stolen property, without notice, or knowledge of the fact that it is stolen or mortgaged property. On their behalf I have defended actions brought against various commission companies insured under their policies. I have also defended commission firms who were not insured and in which an insurance company was not involved in any way. The standard form of mortgage and theft policy now being issued by the Hartford Fire Insurance Company to market agencies only protects a livestock commission firm for loss from selling mortgaged and stolen property where the livestock commission firm has no notice or knowledge, at the time it sells or purchases the livestock, that such livestock is either mortgaged or stolen. It happens sometimes that some employee of a commission firm gets notice of the existence of a mortgage. Later that mortgaged property is by the mortgagor shipped to the commission firm for sale. That employee fails to protect the mortgagee's rights. Such a loss would not be protected by this policy. Then too the policy requires the giving of notice when a claim is first presented, or when suit is first brought. Then, too, there are other defects in the title besides mortgaged and stolen property. Property can be subject to a lien. Also a commission firm can handle embezzled property. Of course there are hazards in selling the livestock which do not arise out of the defects of the title. This policy would not cover the hazard of a defect in title to livestock arising out of the administration of an estate. I am familiar with [fol. 800] the expenses that attend the conduct of litigation and the expense of the investigation itself. The defense of litigation is very expensive. It involves, first, the investigation of facts. Then, there must be an investigation to determine the validity of the mortgage. After that the question must be determined as to the relation that existed between the mortgagor and the mortgagee as to whether there was any waiver of the mortgage lien, or whether there

has been any ratification. The evidence is scattered in several different places, requiring the transportation of witnesses, and the taking of depositions. We had one particular failure in western Kansas in which I defended a large number of suits brought against the farmers who had come to the market and bought cattle, and the cattle were practically all handled by one commission firm. After different replevin suits were disposed of, a conversion action was brought against the particular commission firm. All that litigation I would estimate the cost of defending was in excess of $20,000. The major part of that expenditure was made through our office. That particular commission firm was in business at St. Joseph. Subsequent to that failure there has been a bank failure in Kansas that involves another commission firm at St. Joseph, and some commission firms in Kansas City. The firm involved at Kansas City is the Wilson Egan Commission Company. The National Livestock Commission Company is also involved, but [fol. 801] it was not protected by insurance. I do not know that I have handled all the claims that settlements have been made on, and I could not recall all the claims that settlements have been paid. I remember one mortgage claim where I compromised for them in litigation and paid $4,500 for one commission firm. That was the case of the Drumm-Standish Commission Company against the Farmers Union Livestock Commission Company. I am not sure about that, and I am not positive whether Kansas City was the point of the sale and distribution of that property. In the past eight or ten years matters have arisen involving this coverage amounting to a million and a half dollars. I do not know the amount my company paid out in settlement of those claims. It seems that these claims have grown extensively in the last few years. It seems that the marketing of livestock by truck has contributed more to it than any other source. I consider the risk assumed under this policy a very hazardous risk, because of the liability imposed by the law upon commission merchants, the fact that there have been two failures here in western Kansas, and the fact that there has been more misappropriation of mortgaged property in the last three or four years. Furthermore, the statute of limitations is five years. I never heard of this coverage except for one company. The lia-

bility of the Hartford Fire Insurance Company under its mortgage and theft policy is limited to the actual price, or the amount of the proceeds for which livestock is purchased or sold. A commission firm assumes a hazard in the remitting of proceeds. They assume a hazard as to [fol. 802] the solvency of the institution which they select as a depository for the proceeds. They assume a hazard of the solvency of the agents selected for transmitting the money to the shipper. When they send their own check direct they only assume the responsibility of the depository which they select for the deposit of the money. The commission business is a business that is highly competitive, and they always assume a responsibility as to the financial conditions of such principal for whom they are buying livestock. Also, a commission firm which buys livestock on order pays for the livestock and procures the check of the principal drawn on a bank in another city. The check is canceled and charged to the account of the drawee, and the draft of the bank upon which the check is drawn is issued upon another bank. The drawee bank may fail before the draft is received and cashed. The banks with whom he has deposited such a check for collection and the Federal Reserve Bank have protected themselves with proper provisions in their contract. There is nobody left to stand such loss but the commission merchant. I believe that change in the Federal Reserve contract was made after the decision of the United States Supreme Court in the case of Mulloy Brothers vs. the Federal Reserve Bank of Richmond.

Another hazard to which commission firms have been subjected in the last two or three years is the solvency of purchasing agencies on the markets. If they sold livestock to an agency which was insolvent they would be responsible [fol. 803] to the principal for the value. Then, in my experience I have had claims made against livestock commission merchants on account of livestock which they had purchased being defective or diseased. It is a hazard that a livestock commission merchant assumes in the handling of livestock, if that livestock is injured, lost, or stolen. My attention has been directed to a hazard which arose at the Kansas City market in the case of an agency which sold livestock which was defective as to the quality or condition of its health. That case is reported in 160 Missouri Appeals, page 314. I do not know of any other case such as

that, but I have not gone into the law of the states upon the subject.

The Hartford Fire Insurance Company is the only company which I represent that is insuring this hazard. The other insurance companies have plain insurance litigation. They do business in the eastern part of the country as well as the western part of the country. I do not think they write this coverage in the east because there is no demand for it. In the eastern section of the country this hazard is less than it is in the western sections of the country. The hazard that I described is the liability of the commission firm as a bailee for injury or loss of the property as an insurable hazard. Insurance companies will write that hazard, but as far as I know they are not writing the other hazards that I enumerated. There is no form of credit insurance written that I ever heard of or had knowledge of covering the credit on the purchase of [fol. 804] livestock. The only kind of credit insurance that I know of is written where some company will write a policy to an assured, insuring him against loss from trading with certain individuals. I think a reserve should be made to provide for the hazards which I have designated as non insurable. The past experience of a commission firm could not be taken as a criterion to determine what that reserve should be. A commission firm might do business for ten years or twenty years and never be subjected to any loss, and it might do business for twenty days and be subjected to an awful loss.

The best example I can give you of that is the Kent Commission Co. of St. Joseph, Missouri, which I discussed previously.

I have represented John Clay & Co. in legal matters and am acquainted with all of the partners who constitute that firm except Mr. Smith at Denver. I consider them leaders in their profession. I would consider them of very great value in the supervision and management of their business as conducted by them at Kansas City.

Cross-examination:

I do not know what the losses of the market agencies at the Kansas City market have been, during my acquaintance with the market on account of the hazards which I have enumerated.

I have never had any actuarial experience. I don't know anything about how rates on insurance policies are [fol. 805] made up, except I know they are made up by people that are experienced in the hazard. This rate here was a rate that was arbitrarily taken and increased once a few years ago. I take it that Mr. West formulated this mortgage and theft policy, although I don't know. I don't think he based the premium on experience. I think he experimented on it.

I don't know on what basis actuaries usually determine the premium to be charged on an insurance policy or a bond. I know that from the premium must come the revenues from which to pay losses and expenses. Insurance is the law of averages. These hazards might happen to one firm on the market and not happ-n to any other firm on that market.

The hazards which I have mentioned are not peculiar to the market as a whole or peculiar to any market. They are inherent hazards of the business. Some of these hazards have been accentuated in the last three or four years. None of them have been diminished that I know of. The hazards which I have told you about are hazards that could exist any day, any time, any place, under any conditions. It would be hard for me to tell you just what parts I did not draft because before I handled the legal affairs for the Hartford Fire Insurance Co. they already had prepared and issued a policy. Since that time it has been changed and different provisions inserted. It would be impossible for me to tell you what provisions I prepared or remodeled in that policy. I do remember I inserted the 8th clause there on their advice. I drafted the clause lim- [fol. 806] iting the coverage to the amount of the proceeds for the particular livestock sold, or the cost of the livestock. I drafted the provision in regard to claims and the procedure in case of suits and things like that. As to the extent to which I have represented livestock commission firms in law suits where the Hartford Company is not involved, I have represented quite a good many matters for John Clay in connection with the livestock commission business. I have represented quite a few other commission firms. I am on no general retainer by any commission firm at Kansas City or Chicago. In connection with the case which I mentioned of S. A. Delair of Coldwater, Kansas, in

which I represented the insurance company in connection with the mortgage and theft policy, the Kent Commission Company won every law suit. The commission company made several compromises but I don't know the amount. The expense amounted to $20,000 in connection with the taking of depositions, attorney fees, printing records, etc. I don't remember whether the case involved the Farmers Union at Wichita or Kansas City. Suit was brought at Kansas City and settlement made there sometime during the year 1929. It is true that each law suit must be determined upon the peculiar facts of the particular case.

The case of Dale v. Pierson was decided in the light of its own facts, but at any rate a dangerous principle of law was announced. I do not mean to say that people in the east are any more honest than people in the west, but it [fol. 807] would be hard to commit the same theft in the east without the thief being caught. The financial security is safer in the east than it is in the west. I don't know how many mortgages and theft policies the Hartford has on the Kansas City market.

I do know that the partners of John Clay & Company at Chicago maintain a general supervision over all their houses and over all their places of business. They don't sell any livestock themselves on the Kansas City market. The name of John Clay and Mr. Conners and Mr. Wilson are a great asset to any house. It is a reputation that has been built up for honesty and efficiency for several years. I don't think they would stay in business if they were not honest.

Redirect examination:

In case of a loss to commission agencies in which their interests are not insured in a mortgage and theft policy, and those agencies are represented by other counsel, I try to be of assistance to them. In connection with the policy of the Minneapolis National Bank and the failure of certain proceeds in the course of remittances from Kansas City agencies to mortgages upon cattle, I have followed that policy and my company has borne the major part of the expense.

Recross-examination:

I do not recall how many cases arose under our mortgage and theft policies at the Kansas City market during the

year 1929. I know one case that was disposed of in 1929 [fol. 808] that involved the suit of the Federal Intermediate Credit Bank at Spokane, Washington, against the Leitch Sheep Commission Company, involving $20,000. I don't know whether the sheep were sold in 1929 or 1928. Of course there have been a number of little theft claims coming up during the last two or three years since they have been marketing livestock by truck. I cannot pretend to remember them all. Some of these claims are settled out of court and others are not. The Hartford Still writes the mortgage and theft policies.

Redirect examination:

I recommended to the Hartford Fire Insurance Company that it either cease writing the mortgage and theft policy or increase their premiums substantially to build up a reserve to meet losses.

Recross-examination:

I am not responsible for the establishment of the reserves and am not consulted with respect to the establishment of the reserves except more than that they talk to me about the hazards or danger of loss and my opinion with reference thereto. I know nothing about their premium income or anything with reference to that. I am basing my recommendation upon the hazards to which they are subjecting themselves, and especially upon actual experience with two of these failures.

Whereupon the witness was excused.

J. WILLIARD OLANDER, a witness called by the Respond- [fol. 809] ents, after being duly sworn testified as follows:

I am a butcher salesman for the National Livestock Commission Company of Kansas City, Mo. I have been a butcher salesman since December, 1925. I am a partner in the business of that company. I have been connected with the livestock industry all of my life. I started to do yard work when I was fourteen years of age. I completed my high school education and attended the University of Kansas from 1914 to 1917. I became a regular employee at the

yards when I was mustered out of the Army at the termination of the World War. I worked at the yards during vacation periods while I was in school. My first job at the Kansas City Stockyards was as a train runner. I served as train runner in 1919 for approximately one month. I had done quite a bit of that at odd times previous to 1917. I was then put over in the alley as yardman at which I worked for approximately three or four months. I was then given the opportunity to sell calves and I worked at that job until about 1924, then I was put in charge of the butcher cattle department. By butcher cattle I mean the female cattle, the light weight yearlings, the bulls and heifers. I became part owner of the business in 1924. When I started to work down there regularly in 1919 it was my hope and ambition that I would be taken into the firm as a part owner and there was nothing that I could think of that I would leave undone to advance myself in efficiency in that business. In my particular department it is up to me as an owner to see that all details of that service are [fol. 810] of the kind that would be pleasing to any person who would consign their stock to us and it makes no difference to me at what hour I can render a little helpful information to any man in the country or that I can help in the selling of his stock at a considerable extra effort to me. I think that my place in that firm calls upon me to do that.

There are separate alleys and separate pens assigned to the yarding of butcher cattle. On the average day of the forepart of the week I get up around 6 o'clock in the morning have my breakfast and go down to the yards. I change my clothes and go over to the building and look up the number of cattle that are on the yards. I study over the receipts at the different markets before I go out to the alley and when I get out there the man who is helping me in the butcher department has been sorting for a little while. If there is a large supply of new arrivals of car lot shipments in the alley I will talk that over with one man and start sorting and classifying in the same general way. I must look those over that have been sorted for what I like to term the "eye appeal." I want all the cattle that I am sorting to show for that day to have the most attractive appearance possible to the trained buyers. I keep in mind all the time that the water troughs where these cattle are watered must be kept clean. I must watch and see that the

troughs in which they are fed hay are all kept full and oftentimes the hay is rather packed together and must be torn apart by hand. If the boys are busy I will do that myself. Often about that time I receive long distance telephone calls [fol. 811] from our patrons out in the country wanting to know about their shipments and what the condition of the market is. Maybe I will get a call from someone asking whether I think it will be all right to have some cattle there for the next day. About 9 o'clock the buyers of the different packers start out and if they have mean orders they want to look over the entire yards before they start buying. At other times they have orders and I want to have my cattle right to show on the first round. If they bid pretty mean I don't stay with them very long but get rid of them as nicely as I can. If there are any other cattle in other alleys that are moving to the scale pretty freely that may signify that there is action on the part of some other buyer I want to go there and get hold of him. We go on with this operation until our cattle are sold or until the day's trade is about consummated. If any cattle are held over they must be bedded down and if the yards are muddy the pens must be cleaned and bedded. The water must be taken off and new feed provided. Oftentimes our pens are muddy and during the middle of the morning on a dull market day we will take those cattle out in the alley and clean the pens right then. This procedure will go on until around 2 o'clock at which time we should have an extra good idea of the way the day's trade has been. At that time I generally take twenty or thirty minutes off for lunch and then go back and finish up the day's trade.

The man who works with me in the alley assists me in [fol. 812] the selling of stock cows and stock heifers if he has no cattle to buy on that day's trade. After some of the first cattle are moved to the scales the boys bring the tickets back. It is my duty to mark these tickets and see that they are sent to the building or to the office just as soon as possible so that the record, if it is a straight carload of cattle, may be made up by the boys in the office. As a day's trading develops there are the jackpots of cattle to be gotten out. I must keep in mind all the time the different cattle or the different people to whom I sell cattle. I give them to the jackpot man. When the tickets are brought back I must mentally compare the written or stamped weight of

the ticket with the weight I have in my mind to be sure that there is no large discrepancy in the weights. After the trading is done I go to the office and if there are some of the customers there they want information with regard to the market and how their cattle sold. I write a letter to the men who have not been able to come to the market with their shipments. I generally write on the drive-in cattle and they must be mailed out. After I get all that done it is generally about supper time.

Our heaviest runs of butcher cattle occur in the fall of the year. At those times I have had to work after supper. On Friday it does not take as long as it does the forepart of the week to clean up the cattle that I have to sell.

For a number of years I have nearly always gone out to our farm on Saturday where we are feeding some cattle. [fol. 813] I have often found by sorting and separating and working around until I find the class of cattle that are really suitable and the class which looks good to the buyer that we can work better prices out of them than we could have by leaving them together. On one occasion I was offered $9.50 straight for a load of calves and the owner told me to go ahead and sell them. I knew one packer buyer who had an order and I took him down there, sorted off the light weight shipping calves and sold them to him for $12.25. I knew another buyer who had an order for baby beef calves and I sold him 10 or 12 calves for $12.50. I sold the medium weight calves at $11.50 to a shipper. A few steer calves were left in the load which went back to the country at around $10.50. The other day I sold a bull at $5.50 and if I had sold him to the first buyer I would have taken $4.75. He had to be moved by our men from the drive in gates at the north end of the yards up to our gate before we sold him. We sold him and sent the proceeds up to the bank in the country and sent the account sale in a separate letter. This was all done for 75 cents.

I would not say that expedition in making sales is always a test of efficiency on the part of the salesman. One day this week I sold heifers from 3¼ cents a pound up to 9½ cents a pound, cows from 2½ cents a pound up to 7½ cents a pound and bulls from 3 cents a pound up to 5.50. I do not always sell all the cattle the first day they are in the yards. Sometimes cattle are forwarded to other markets after I have shown them. We don't get anything for [fol. 814] the cattle that are not sold but are forwarded.

Cross-examination:

Before I became an owner I was a paid employee of the firm. I received a regular salary. I sell the great bulk of the butcher class of livestock for my firm. My appraisal work is not necessarily connected solely with the butcher trade of our firm. I might be invited out to look at a string of stocker cattle or stocker steers that come in a different department, or on an appraisal trip I might be invited to look at some steers.

Redirect examination:

There does not seem to be very many new ones going to work at the yards. It is my understanding that the average age of members of the Exchange is around 52 or 53 years.

Whereupon witness was excused.

Fred Olander, a witness who had previously testified was returned to the stand and testified as follows:

This letter from the Hartford Fire Insurance Company, which has been marked for identification Respondents' Exhibit No. 31, is a letter addressed to me as chairman of the rate committee, which is in answer to a letter to the Hartford Company in regard to the items mentioned in Respondents' Exhibit No. 25. The separately numbered paragraphs have reference to the paragraphs bearing the same number in Respondents' Exhibit No. 25.

(Whereupon, Respondents' Exhibit No. 31 was received in evidence, and the witness was excused.)

[fol. 815] Mr. Charles N. Bird, a witness called by the Respondents, after being duly sworn, testified as follows:

I buy cattle on order at the Kansas City Stockyards, and have been connected with the livestock industry about 45 or 46 years. I began on a farm in Illinois with my father. Later, I went with a commission firm at the National Stockyards, and about fifteen months later I began buying cat-

tle for Morris and Company. I was cattle buyer for Morris and Company about 28 years. For all that time, with the exception of perhaps two and a half years I was head cattle buyer at several markets. Those markets were St. Louis, Chicago, St. Joe, and Kansas City. I was head buyer at Kansas City about 19 years. I came here when the plant was opened and continued until approximately the time when the plant was absorbed by Armour and Company. During this period of time there have been a great many changes in the result of buying. We buy grades instead of just fixing an amount in our minds, as we used to. They have different sorts now that they didn't have at one time. Now I suppose there are three times or maybe four times the different grades of beef that there were then, not different grades, of beef, but they make that difference in the grading of them. I think it is the idea of most of the commission men, especially those that are best posted, to shape their cattle in a way that they will fill some specific order, or will go in a class. They will sort out a bunch of choice westerns and a few good natives, some medium [fol. 816] western, and possibly take out a cutter or two, and maybe a stag out of a load, and sell them on their merits. In that way they would get a better price. I think it is very necessary to sort to grade in order to get the best price advantage. There has been quite a marked change in this direction in the last four or five years. Fifteen years ago, when we were buying for Morris, we would buy cattle in strings, when we thought the price was right, irrespective of the grade if they were slaughter cattle. They came in strings then more than they do now. A great many cattle came in trainloads, and often we would buy two or three trains of those cattle in a day. I would say there is a greater range in the variety of cattle as to grade classification and killing value coming to the Kansas City market than ever before. It is becoming greater each year. The price spread between the lower and better grades has been increasing. When I first became head buyer for Morris and Company here, extreme range was from $1.85 per hundred weight to $4.00 per hundred weight. I have observed a tendency all through the years for that spread to increase. That increases the responsibility for the work of the order buyers. There is no sign or mark on an animal by which you can judge its value. We have to abide

by the comparison as to the percentage of dressing and the quality of the animal. It is very difficult to do that with this wide variety of slaughter cattle. A person has to know his business pretty well in order to sell his cattle properly, and to buy them either. There is no mechanical device that can be used to register value or grade. I think [fol. 817] it is very necessary for a good cattle salesman on the Kansas City market to be born with an aptness for cattle and a liking for them. Experience is very necessary, and he must be a natural trader. He must be able to judge weight, quality, and breeding. The performance of the work of salesman and buyers requires initiative. When I was cattle buyer for Morris and Company, I received reports from other markets, and I would get the report from each buyer at each different plant. We would often buy three or four times as many as we had orders for, and sometimes only half as many. The beef department in those days did not exercise as rigid a control over the cattle buyers on the market as it does today. A great variety of methods of feeding livestock increases the responsibility of the buyer and seller in handling livestock. I think Kansas City has by far the greatest variety. I have observed instances where salesmen, by their competence and ability in selling, have, in my judgment, secured prices of such a nature that the increased price received, due to competency, more than offset the commissions paid.

I have bought and fed cattle. I have handled them out on the farm, fed them there, and shipped quite a little. Practically all of them were sold on the public market. In selecting a commission firm you would want a person that was popular with the buyers; a man that has a way of handling his men so that they would give him all that they could for their cattle. You have got to have a man that you have confidence in, a man who knows weights, values, [fol. 818] and how to sort and fit cattle for show. The more efficient the selling organization is on the public markets, the better off the producer will be. I wouldn't be in the commission business if you would give them all to me. There is too much effort and money, both, spent in the commission business. When I was in the commission business I had to go to the country on Thursdays when I was just about worn out. I would drive in a car about as fast as I could from one place to another, looking at cattle.

Then I would hurry home, get a little sleep, and go back to the yards on Monday morning. It was positively too much of a dog's life. If you have a great deal of order buying business, and do it satisfactorily it is hard. Where you can buy stuff which is shaped up for you, and your orders are pretty loose, I suppose it will be fairly easy compared with the selling of cattle. I have to draw upon my store of experience and knowledge of the business, and then I find some dissatisfaction. I really like the buying end of it. The selling end is harder for me.

I consider the Livestock Exchange very essential. It governs, to a great extent, the morals of the people, incites them to greater activity and integrity. They stand for clean trading, and protect the seller that is shipping his cattle to the Exchange, and he is sure of getting his money when he does make a shipment. They also stand for a good many of the rights of the farmer and see that they are [fol. 819] protected. They see that the unmerchantable cattle are sold on their merits. I have seen a greater development of character, intelligence, and competition. It is only because they are really and truly masters of the art that they remain in it. I am not a member of the exchange. I am interested in a ranch which is leased. I expect to go out on it in August. I would be very much disappointed if the Exchange did not continue.

Cross-examination:

I have been on the Kansas City market altogether 26 years, with the exception of about a year either at home or down at St. Joe. I started in the commission business as a partner with Ralph Wright and John N. Nichols. I was in that business two years. They are still in the business. When I left that firm I bought an interest in the Crider Commission Company. I didn't like the commission business, and I went in with Charley Crider merely because he was sick at the time. I think there would be something like 20 or 40 different grades of cattle. The packers adopted this practice of grading within the last five or six years. The reason for the increase in the spread in the price of the best and poorest grades of cattle is the fact that they get a greater percentage of good, choice meats over what it was in just a medium animal. The reason

this difference has increased the responsibilities of the salesman is because two steers may look equally as fat, and have the same breeding, and maybe bear the same brand. One fellow feeds them alfalfa and corn, and the [fol. 820] other feeds cottonseed meal and hulls, and possibly a molasses feed with a percentage of corn. The two animals will weigh practically the same, and will have made practically the same gain, and yet you will find out that one would not grade anywhere near where the other one would. The only way a man can tell that is in coming in contact with these cattle and getting to a place where he can almost diagnose them like a doctor would.

I shipped to several different commission firms because I figured that they all had about the same ability and I just want to be friendly toward all of them and divide the business up. I shipped to people that I knew and people who I thought could handle the stuff to a pretty good advantage. I do not regard all commission firms of equal ability on the market. That is determined by the manner in which they trade, the way they shape their cattle, the way they look after them, the way they water them, and the way they price them. I think one would always rather trade with a person that is smart and really knows than to trade with one that does not know and is guessing and trying to feel out the market. You feel like bidding a man that prices cattle close because he realizes that you are a help to the market and that you want to buy your stuff in line in order to retain your business. The man who feels the market out and asks considerably more than the market will stand is not as efficient a salesman as the man who senses the market. He does not trust himself. In the first place I think knowledge gives him confidence. It is like anything else, if a man likes it he will do better in it. The [fol. 821] fact that one salesman may have a car or two a week and another salesman may have considerably more than that does not make any difference in respect to a salesman's efficiency. If the fellow that has one or two loads of cattle would do his duty by himself and his patron, he would have the benefit of anything that the fellow in the active game would do. The volume that the salesman handles would enter into his efficiency. A person could have too many and could not handle them properly. It would take too much time to show them.

Little novelties and things like that has not a thing on earth to do with determining where the shipper is going to send his livestock. The shipper is looking mainly for service and he will ship to the man who can get him the market for his cattle. I cannot see how a man can do anything crooked in the stockyards under the system they now have and get away with it. The Exchange makes it practically impossible to do it.

Redirect examination:

While I was heard buyer for Morris & Co. I got a bonus and a direct salary of $1,000 a month. I was also given interests in their different organizations, banks and loan companies. I was also given privileges of vacation, with expenses. I received quite a few cash bonuses. I think there may have been a few tnat made as much as I did at different times, but I think there were very few, if any. The grading by packers has increased the work for the salesmen, but I think it is a benefit to the buyer.

[fol. 822] Competition is rather keen down there among buyers and sellers. This results in the demand for a higher quality of salesmanship and buying ability. Up to a certain point this increased competition results in a better price to the owner or shipper. When I referred to novelties I did not mean at all that it was not necessary for the firm to advertise, but I think about the best results that a fellow gets from advertising is in his salesmanship down there and with the general morale of his office, from the yardman to the owner. I don't believe that advertising would be beneficial to them. I think it must be contact more. The salesman who has appraised cattle and is familiar with them and the way they have been fed, in a certain degree has an advantage over the buyer.

I consider it a worth while undertaking for the Exchange and the Stockyards Company to employ a man jointly and interest eastern buyers in making purchases of livestock on the market. In my judgment, the problems that confront the livestock salesman are not similar to those that confront the ordinary salesman of merchandise which has a fixed price at which it must be sold.

Cross-examination:

When I was head buyer for Morris & Co. I worked direct with Mr. L. H. Heymann, who is the beef man in

charge of all the sales and all the buying of cattle, hogs and sheep and the selling of all products, with the exception of the hides, fertilizers and tankage. The buyers at Okla- [fol. 823] homa City, St. Joseph and Omaha worked under my directions.

The commission firms down at the market are anxious to give the most service that they possibly can to their customers and all take a pride in giving just a little more service than the other fellow, if they can find the way to do it.

Whereupon the witness was excused.

HARRY KENNALEY, a witness called by the Respondents, after being duly sworn, testified as follows:

I have been engaged in the livestock commission business for eleven years. I have been in the stockyards 24 years. Before I went into the livestock commission business I worked for Armour & Co. The last seven years I was with Armour & Co. I was a hog buyer at Kansas City. I was the second hog buyer. I bought hogs on the Kansas City market and I used to help out at the Fowler yards when the buyers would be on their vacation or sick, I used to go to the Fowler yards every day and sort their hogs for them. When hogs were unloaded from cars or wagons at the Mistletoe yards, all stock would be weighed out of the cars and put in different pens and sorted. Then they would be reweighed and the difference in shrink would be divided among the buyer and seller. They had different arrangements with some of the shippers, the same did not apply to all. Shippers from certain localities would receive handling of their hogs to feed different from other shippers, and the prices they would pay for them would be [fol. 824] on a different basis. The handling of hogs at the Fowler yards is quite a bit different than it was when I was in their employ, and now they receive a fair percent of their hogs by motor truck, and they are handled practically the same way.

When I left the employ of Armour & Co. I went into the commission business. I did it with the intent to go for the kind of business that the other commission firms at that time paid no attention to whatever. As a hog buyer I found out that the salesmen don't make any attempt to get

the prices on truck in livestock. We advertised and called ourselves a drive in firm. We have ranked first in that business in the eleven years I have been in the business. We have handled very few cattle. Since March 1st we quit handling cattle entirely, but we got back in the cattle business on the first of September. We found that we could not handle one without the other. We never could make any money out of the cattle business. I sell the hogs and have a couple of salesmen under me. I supervise all the selling of hogs and sorting, handling, weighing and feeding.

We handle truck in consignments a little different than the majority of the firms in Kansas City for the reason that we have been in the business from its very infancy and our yardmen and salesmen do the office work. My sister is the only employee in my office. A few months out of the year we have an extra stenographer. The salesmen and yardmen make up the account sales, and one yardman is our [fol. 825] bookkeeper. They all get down in the morning at 6:30, and when the selling and yard work are done they come up to the office and do the office work. We work on an average throughout the year of three nights a week, and at this time of the year five nights a week until 7 o'clock. We work lots of nights until midnight.

Our audit on Government Exhibit 14-51, which is the audit of my firm, contains an item of $1,152.96 for meals. Ninety per cent of those meals are for working at night. We pay for their dinners at the yards. Part of that expense is for meals that we send down to the yards. They work right through the noon hour and they eat as they are working. Through the year I myself work six nights a week because when I am not selling and handling livestock in the yards I am out in the country consulting and advising with the people. I spend from 12 to 14 days of each month on the road, besides working every day. We drive out within a radius of 150 miles. My sister works longer than the rest of the employees with the exception of myself. She works 4 or 5 hours on Sunday. I work six Sundays out of seven the year around. I am on the road practically every Sunday. Tomorrow I am going to Gardner and Edgerton, Kansas, to appraise a loan for a man that could not borrow money at his own bank in the country. I nego-

tiated these loans and endorsed the paper for some of them. Ninety-five percent I think I do not endorse the paper. I receive no profit in getting these loans. I do it to help him make a profit and also in order to get his commission when [fol. 826] they come to market. Lots of times they do not even come to Kansas City. Our business has been gradually increasing every year. Owing to the length of times we have been developing the business and the knowledge we have of it, we have an advantage over other firms. I have had the experience of receiving so many hogs in the past three months that I did not give a good many of them the right kind of selling, feeding or handling of them.

Whereupon the witness was temporarily excused.

M. L. McClure, a witness called by the Respondents, after being duly sworn testified as follows:

I live in Kansas City and I am a director, chairman, and Federal Reserve agent of the Federal Reserve Bank of Kansas City. I was manager of a large commission house at Kansas City from 1899 to 1920. I am a member of the Kansas City Livestock Exchange. The company that I was interested in has gone out of business and a new company took over that business. I was manager of the Drumm Commission Company. I have been connected with the livestock industry since 1883. I have been interested in the production of livestock and I own a one eighth interest in the Double Circle Cattle Company that raised cattle in Arizona, a corporation that we sold out in 1928 for $750,000. I am now interested in a ranch in Kansas and am handling about 500 head of cattle. I was a Kansas City [fol. 827] director of the War Finance Corporation. My connection had principally to do with the granting of credit upon livestock and the handling of the paper. I was president of the Stock Growers Finance Corporation, which was the name under which the bankers' fifty million dollar pool operated. I managed it commencing in 1921, and it was liquidated last year. I now have an interest in the Drumm-Standish Commission Company. As manager of the Drumm Commission Company I knew practically all the other commission men at the Kansas City stockyards. I think that sound executive management in connection

with the operation of a commission business at the Kansas City stockyards is absolutely necessary. I do not know a business anywhere that needs good, strong executive officers as the commission company. I think the Exchange organization is absolutely necessary and has accomplished a great deal of good.

In conjunction with Mr. Sherman P. Houston of Malta Bend, Mo., Mr. Lyle A. Stephenson of Kansas City, Mo., Mr. John W. Hudelson of Pomona, Kans., John P. Swift of Kansas City, and Norris Broaddus of Kansas City I made an appraisal, or we expressed our opinions jointly as to the fair cash value for the year 1929 of the service rendered by certain owners of commission business at Kansas City, in the light of establishing what, in our judgment, would be a reasonable compensation for the personal service, time, and effort devoted to the business in that year. The men named have been familiar with the business and are acquainted with many of the gentlemen, the fair value of [fol. 828] whose personal activity and service we appraised. Mr. Houston is a prominent livestock feeder and dealer at Malta Bend, Mo., and is connected with a bank there. He has been a very active feeder for many years and has taken a general interest in the livestock industry and the marketing of livestock. He gets his supply of feeders mostly here at Kansas City market.

I am familiar with the work that commission men do at a market such as Kansas City. Our appraisal was based on the services that they were rendering. We did not consider any investment, although the reliability of the individual entered into it and his responsibility. Respondents' Exhibit 32, which has been marked for identification, contains certain information which we had before us. This information covered the time which each individual had devoted to the livestock industry and to the commission business, the nature of his duties and the gross sales value of the livestock which his organization handled. I marked each of these sheets with my initials, except one, in regard to the John Clay statement. At the bottom of the page I wrote in the figures representing the fair cash value of the services of the individual appraised. That amount was representative, in the judgment of all the members of the committee, of the fair cash value of the services of this individual to the business with which he was associated.

We spent practically the whole day there and it would have taken a long time for all of us to have signed it, so we [fol. 829] asked that a paper be prepared covering the situation. That paper is the certificate that appears at the opening of this exhibit.

During the time I was engaged in the management of the commission business at the Kansas City stockyards, I performed duties that had to do with the employment of men to serve that business. On somewhat the same basis I was attempting to arrive at the fair cash value of the services of these individuals to the organizations with which they were connected.

I have been a director of the Federal Reserve Bank at Kansas City since it was organized in 1914. I have been chairman and Federal Reserve agent since May 1, 1923.

The amounts appearing on each sheet under the heading "Appraisers' Findings" in Respondents' Exhibit No. 32, are representative in each instance of the opinion of this committee as to the fair cash value of the services of the individual whose name appears on each sheet to the organization with which he is associated. We unanimously agreed on each one of the figures. We did not have the information as to the actual compensation or the return which these individuals received out of the business in 1929. We valued it on what we considered his services worth, not what he was getting. Full discussion was had among the members of the committee.

I am acquainted with Mr. Clay, Mr. Wilson, Mr. Kleman, and Mr. Connor of John Clay & Co. I came in contact with them in competition in business. Mr. Connor was also a [fol. 830] director of the fifteen million dollar pool to relieve livestock credits known as the Stockgrowers Finance Corporation. Those gentlemen are competent and able livestock commission men. The time that they devote to the business would not be the best measure of the value they would be to the company. Their names having been engaged in the livestock business probably fifty years and from their experience in knowing how that business should be carried on would be the best value, and I think each one of the partners would be worth from five to ten thousand dollars to this company here. I think John Clay could leave the business here entirely in his name for any other commission firm it would be worth, without doing anything,

ten or fifteen thousand dollars a year. Assuming that they devote 8% of their time to the business here, their ability in directing the business would be worth that much.

JOHN P. SWIFT, a witness called by the Respondents, after being duly sworn, testified as follows:

I have been engaged in the general insurance business for about five years at Kansas City. Mo. I was engaged in the livestock commission business from 1910 to 1925 at Kansas City. I am at present a member of the Livestock Exchange. I have a stock interest in the business of Swift & Henry Livestock Commission Co. It is a comparatively small interest. Five shares constitutes my holding. There are only one hundred shares. I held a lot of different committee as-
[fol. 831] signments in the livestock Exchange and finally was president. I retired from the commission business and entered the insurance business because I thought I could make more money in the insurance business and not work as hard as I had to in the commission business. (Counsel reads from page 4 of Respondents' Exhibit No. 2 a statement relative to the methods employed by packers in connection with the operation of and acquisition of receipts of livestock at private stockyards.)

I think that is a fair statement of the facts. I agree with the statement contained in the letter of the Secretary of Agriculture appearing on page 7 of this exhibit. These situations had an influence in my decision to retire from the commission business. Diminution through direct buying of the volume of hogs passing through the public market at Kansas City had an effect upon the unit cost of operation of the commission business. It turned the hog department of a lot of commission firms from a profitable money making end of the business into a money losing end of the business. The firms still were forced by reason of competition and by reason of the fact that they had some hogs coming to keep a first class salesman.

When I was in business at the stockyards I was acquainted with the various owners of commission firms. I have heard Mr. McClure testify. I was a member of the group who appraised the services of owners of commission firms for the year 1929. A group of us met early in the morning and we

[fol. 832] had the names of all these people to try and set a fair value on the work of their services. We proceeded to labor there for some 10, 11 or 12 hours. After a discussion of some length we arrived at what we considered a fair value on their services. That report represents the unanimous opinion of the com-ittee. It was arrived at only after a discussion which took a good many things into consideration. The committee collectively had got information regarding practically every individual that had had business dealings on the selling side, or that had been associated in business as competitors with these people. I think the amounts set up as the fair cash value of these gentlemen are exceedingly fair. If anything, they may be a shade low. I agreed on a figure for some of these men which, if I were rating them personally, I would rate a little higher. This is a matter of agreement. It is just like a horse race, everybody had his opinion.

Naturally, we considered the amounts that were received for services rendered in comparable lines of activity. I cannot speak for anyone else, but I would have to compare what a man can do in the insurance business as compared with the livestock business. That naturally was in my mind. I did not take into consideration any return that should be realized from capital invested in the business. This is purely a service rendered proposition. I think I can say that practically no consideration was given to the amounts actually paid to the gentlemen whose services we valued. As far as any discussion with the entire committee or any knowledge as to the salaries, we had none. It seems to me [fol. 833] that one case of that kind did come up for discussion and we decided the fellow was overpaid. It made no difference to us. The only information which we had before us is what appeared on the exhibit. Of course we called to our assistance any outside information which we had through acquaintance and knowledge of the market.

The commission business is a good business but I think the return has shrunk to the point where it is not attractive to men of younger years. If the Packers and Stockyards Administration is to be granted all the other authorities that they now have over commission men, they certainly should have the right to control who shall operate on the market. If a man has been guilty of unfair market practices and then comes along for registration, and I have

to compete with him and I know he is unreliable, I see no reason why the Packers and Stockyards department should let him operate. That is exactly what happened in certain cases of my own knowledge. The open competitive market is the only way you can market livestock. You have a perishable product, and you cannot do it any other way. Anything that interferes with it should be done away with *it*.

I assisted in drafting a bill which was presented to Congress, giving the Secretary of Agriculture the right to refuse packers permits to operate private stockyards adjacent to public markets unless, in the opinion of the Secretary of Agriculture, public convenience and necessity demanded the [fol. 834] operation of those private stockyards. The packers fought that legislation successfully.

Whereupon the witness was temporarily excused.

LYLE A. STEPHENSON, a witness called by the Respondents; after being duly sworn, testified as follows:

I have been engaged in the insurance business for 23½ years. I have knowledge of the business as conducted at the Kansas City stockyards. I used to be a telegraph operator and I worked out at the stockyards. I worked there from 1903 to 1907. I became acquainted with the commission men who were in business there at that time. I have retained those acquaintances and have formed others. While there I became familiar with the method of operation on the market as a whole. I heard Mr. McClure testify this morning. With the other gentlemen named by Mr. McClure, placed my opinion upon the cash value of the services of the various individuals described and named in Respondent's Exhibit No. 32. I appraised these men on the same basis that I would men of like ability in other lines of business. In practically every instance I took into consideration information which the various individuals had about the market and these men as well as the information that appeared in the exhibit. The amounts that are set out there are representative of the cash value to the several organizations of these owners of business are not, in my judgment, [fol. 835] fair and reasonable compensation for their serv-

ices. It is my opinion that they are underpaid upon the basis of the figure which we arrived at. The figures were compromised on agreeably from certain intimate knowledge of the livestock business. They contribute more to build up a stable and economic market for the man who raises the livestock than they receive for the work they do. They are veritable experts and they are in no way adequately compensated. The gross commissions earned during the year 1929 was the only information that we had as to their earnings. I am in accord with Mr. McClure's testimony in connection with the description of the opinion and judgment of the appraisers who valued these services, as expressed in Respondent's Exhibit No. 32.

Whereupon the witness was temporarily excused.

M. L. McClure, a witness previously sworn, resumed the stand and testified as follows:

Respondent's Exhibit No. 33, the same being regulation J of the present regulations of the Federal Reserve Board, was offered and received in evidence.

Under our existing rules relating to check clearing the credit does not pass through our member bank until we actually get the return on the item. It must be in Federal Reserve exchange payable in Kansas City. We publish a schedule giving the length of time it takes to realize on the [fol. 836] various items handled at various points. All items on a Kansas point have a two day deferred payment. On Missouri, it is a two days deferred payment, except Kansas City and St. Louis. I think St. Louis is cleared in one day's time.

Cross-examination:

My present interest in the Drumm-Standish Commission firm is as a stockholder in the amount of a trifle over $20,000, a trifle over $20,000 of the $125,000 capital. I attend their stockholders' meetings, but I am not a director or officer in the company, I don't have anything to do with the hiring of employees in that company.

Personally, I have never bought or sold livestock on a commission basis.

In determining the ability of a man we would soon learn if a man was not giving satisfactory service. By experience we learn whether they were satisfying the shippers. The salaries in stockyards are based just like any other salaries, on the prices paid by others and in other like employment.

By mutual consent of all present I was made chairman of the Committee of Appraisers. I was not given any written instructions or outline. It was around 9 or 10 o'clock in the mornings and we met in the office of the Secretary of the Livestock Exchange. Those sheets were presented to us and we were asked to make an appraisal of what we thought would be a fair valuation of the salaries of those people on the sheets. That work was all done [fol. 837] that day. We had the facts as stated just as they are there on those slips. I do not know who prepared this statement containing certain comments covering two or three pages at the beginning of this appraisal. I haven't a bit of doubt but what they were read over before the Committee acted. I would say that our Committee did not prepare them. I do not know whether our Committee read them over. I think I must have read them over before but I have no recollection of it. I think we handed the results of our deliberations to somebody down there but I do not remember who it was. (Counsel for Respondents makes a statement that the memorandum contained on pages 1, 2 and 3 of Respondent's Exhibit 32 was prepared by John W. Roberts and who read it over to the Committee at the time it was made.)

I do not think that Mr. Roberts read this memorandum to us. The material contained in this memorandum did not in any way effect the deliberations of our Committee. The initials in blue appearing on each one of these sheets are mine. They were made by me. I also put on the figures showing the valuation of the service. I think we necessarily would have to make some comparisons but we arrived at the conclusions entirely separate. In considering what they were valued at we had to consider what such work could be done and we compared the services of the different men so as to give the valuation on their services. We made that comparison by the length of service and the amount of [fol. 838] business done. A cattle salesman, if he is a good one, will improve every day that he is on the yards. The

longer he is in the service the more we would allow him up to a certain extent until we would find that we could not pay that much and could not increase his pay. After a man became perfect in it he might not earn any more money than the man that was still struggling along trying to get perfect. I don't know at what point he would reach perfection. That question did not enter into our discussion. We knew that some were in the service longer than others and were more experienced and for that reason would be better salesmen. I do not think we decided up to what period of service we would give weight to that factor. The comparisons among these people were only one of the few things that we did. We used our best judgment, our best experience, our knowledge and acquaintance with the men. We were not trying to boost salaries or reduce them. The volume that one firm handled compared to the volume of another firm would enter into a part of it. The men that did not sell as many cattle would not have as much to do as the other men. We had before us the number of livestock handled by the firm but not the number of livestock handled by each individual. We did not have in written form the information as — the organization of the firm and the personnel employed. We knew by experience how much probably the head salesman would make and what other parties he had. We could guess pretty closely at the number of salesmen they had on an employed basis. We did not know what they paid those men. The Committee did not have *nay* more definite information than what I have already stated. I want to say that this Committee was not solicited to make any valuation on any man's services and they did not go at it in a surreptitious way or any other way. We, as business men, met there and did the very best we knew how in fixing those valuations. We knew the man's duties and we made an attempt to fix the valuation on them without any solicitation or advice from anybody. A comparison of the volume handled was only one of the things we used. We used the length of time they had been in service, their ability, and our knowledge of the man. If the volume in one case was greater than another that would not necessarily tend to increase the allowance we would make in that particular case. We considered all things attached to the fixing of the valuation of an individual service. One man might be a better judge of livestock. We considered

our own personal knowledge about those matters. The nature of that personal knowledge was acquaintanceship. Each member of this Committee is not personally acquainted with each person whose services have been appraised. One or more of them might have been acquainted with them.

In comparing the Fred O. Morgan Sheep Commission Company, a partnership, and William Leitch Sheep Commission Company, a partnership one had $2,191,000 of busi- [fol. 839] ness and the other $1,100,000 of business, in the one we gave two salesmen $10,000 and in the other we gave them $6,400. If we had judged entirely on values we would have doubled the allowances. We took the same grounds as you would in employing a grocery clerk. Value was a part of the consideration in this particular case. From looking at those reports I could not tell what other factors were given weight and to what extent we gave them weight. We never could tell what percentage we gave each of those reasons. It would be impossible to tell that. I don't think any commission man could do that.

I am personally acquainted with some of these four men but as to which ones I refuse to answer. (Counsel for Respondents makes objection to the line of cross examination on the ground, among others, that it is embarrassing to the witness to be called upon to discuss his personal acquaintances.) I have no objection to telling the people that I know down there. (The witness then proceeds to call off the names with whom he is acquainted and the length of time during which he has known each.)

In the case of the firm of Wester Brothers and Smith Commission Company I think R. W. Wester is the only one I know in that firm. I know a good many by reputation, etc. In fixing the fair cash value of the services of Dan Wester at $3,500, J. P. Smith at $5,000, and R. W. Wester at $4,000 we took into consideration that Dan Wester [fol. 840] was in the business as a steer salesman for 11 years, J. P. Smith was a cattle salesman for 34 years and R. W. Wester was a salesman and order buyer selling hogs for 25 years. We gave weight to the experience we thought each had in the livestock industry. We gave consideration to all those things.

I cannot give any more information than there is in my general answer that I have considered those three factors

and I do not know just what weight I have given to anyone of the three. As to which was most important in arriving at our conclusions, I cannot answer for the rest of the Committee, but I think I would consider the general character and the experience and success of the party referred to.

I have known Mr. Elliott of the Elliott Swain Commission Company for 32 years. I don't think I have known Mr. Swain so long. The length of time that I have known these men was a factor in arriving at my conclusion whereby one got $4,000 and the other got $5,000. The time that they were employed entered into it. Mr. Elliott has been down there 35 years and Mr. Swain around 28 years. I do not know whether Mr. Swain was always employed as a salesman but I do know that Ed Elliott has been all those years employed in the yards. That is only one of the things I would value his services for a thousand dollars more than Mr. Swain. In referring to the success of the individual, I had in mind their general reputation as commission man. Mr. Examiner, I have recommended hundreds of people for [fol. 841] places in positions and I have hired hundreds and I have never had occasion as a business man to analyze my thoughts and ideas as this examiner is requiring me to do now. If I am not competent as a business man as a whole for what I have said, I do not object to his attacking my ability or my experience, but I do object to having my mind torn up and put in pieces in analyzing my personal friends and all that. I do not believe the Secretary of Agriculture requires any such information as that.

That answer goes to all of those questions because I cannot expand on anyone of them. There is another thing that we did take into consideration always, what such men were able to obtain in like kind of employment. Such experience has a value in it, too. The only information of that character which we have before us was our own personal knowledge of it. We have 360 employees up in the bank and I have had 125 or 130 employees at the stockyards. I have been in that business all my life and I have a reason to know how much every employee gets and whether they are capable or not. I can check it up on them while I cannot maybe on the professional man. I have been in the commission business or was in the commission business for at least 25 or 26 years and why

wouldn't I know the salaries that were being commanded in the livestock commission business. I did not pitch those values on my knowledge of what is being paid in the banking circles. I gave weight to that only in connection with the men who are employed in the office. I knew what their employment was worth and what wages men are getting [fol. 842] in a good many lines of activity. As to what the total market value of all the sales and purchases has to do with the fair cash value of a man's services, I think a firm would not employ a man who did not earn his salary. The firm would soon go out of business if the value of the services were not equal to the salary. We did not have before us at the time we did this work the expenses of the operation of this business, as to whether these men were being employed on a profitable basis. We knew they were still employed on the kind of wages that men of that character and experience obtain. Every firm employs their men as cheaply as they can so that they get the best service. I do not believe that we had any of these men in to ask them questions.

In the case of Long Perry Commission Company we allowed $4,000 for the fair cash value of the services of Albert E. Long, $6,000 for Robert B. Perry and $4,000 for B. W. Perry. We usel the same formula in that that we did for all others. We took everything into consideration that would bear on the value of his services. I do not know Robert W. Perry or B. W. Perry, I might know Mr. Long. There were a number of other men on that Committee and they may have known him or there might be some other reason; we gave consideration to everything that one could learn and know about them. As to what factors makes the difference between these salaries, I might not be able to tell that but I might do that. As a general thing a hog [fol. 843] salesman does not draw as large wages as a cattle salesman. B. W. Perry is listed there as a cattle salesman and buyer and we have him down at $6,000 and the hog salesman down at $4,000. There is a difference in the time and service. B. W. Perry's experience covers only 16 years and probably less than that in the sales business. Robert B. Perry has been in the commission business 20 years. The difference of 4 years experience is only a part of the consideration.

I do not recall our consideration of Robert H. Stover and

Charles F. Vieregg of the W. M. Leitch Sheep Commission Company. I do not recall the factors which entered into our consideration that made the figures the same for their services. This report represents the unanimous opinion of our Committee. There was not a wide difference of opinion to any great extent. We discussed it around the table and each one stated his opinion and conclusion. There was nobody lead the committee. Each one had his own individual ideas and then we got together just like a jury would. It was my understanding that every member of the Committee was satisfied with the result in each case. I think there were several cases where men that were not known to any member of the Committee. We had other things to take into consideration. I have never been called upon before to fix a value of this kind by a court and I have never testified as to the value of personal services before. In determining the salaries which I will pay the employees [fol. 844] at the bank I give consideration to the amount of work they do, their capacity, what they have been employed for before and for the same things that any business man would employ*ing* an individual. I have a general knowledge of what different lines of banking services and activities are commanding, by way of salary. We started out with the understanding that we would consider each case individually. The value we placed upon their services was for the year 1929. I do not think it would be any different now. We fixed that value from the standpoint of the man himself who was to do the services and the work. I think we figured it was the value of that service that would have to be paid by the firm for like services. When you employ labor you have to go into the market and have to pay what the market value is and we figured that is what it was. I believe where the owner of the commission company has a small business he does the work himself and his expenses are less. He gets all the profits and his salary would be higher in proportion, and ought to be, than a man who was on a regular salary from a corporation or a partnership. That should be considered and that is the way the Committee considered it. We differed to some extent and we argued the question out just like a jury.

Mr. Houston and Mr. Hudelson had more experience from the shipper's side than I had and they could judge of the qualification of a salesman just as good or better than I could. Jack Swift actually had experience in the yards and

[fol. 845] would be a better judge of these matters. It was a composite committee trying to arrive at a just and fair valuation of services. In some cases we knew that the firms were engaged in the loan business and in fixing the value of the services of the manager we made a difference. In the case of F. G. Robinson of the Ryan Robinson Commission Company his duties are not only the management of the business and overseeing what was done in the yards but also making loans. To a certain extent that was a factor in the case of the firm of Swift & Henry. I think we made the valuation of the commission part, and he should be paid in addition a commission for his services to the loan end of it. I don't think there is any way that you can arrive at a determination of the quality of the services rendered by a salesman. It was considered with the other matters. We did not have before us the quantity of services performed by each man. I came down and made this valuation and appraisement to the best of my ability as a business man. I gave my sound business judgment on these matters and to be harassed and continually asked the reason why I don't believe any business man would like to stand for it. The figure which we have set down here I consider to be the earning capacity and their value to the firm which employs them.

In regard to the difference between individual No. 4 of Firm No. 59 and individual No. 8 of Firm No. 63 I think that all courts, and the United States Treasury Depart-
[fol. 846] ment, in accepting the valuation on income tax, permits trademarks and good will to be listed, and in the case referred to, a long time actively engaged in the business, and it is also true of the other case. Their good will, their trade name is worth a large sum of money. I would say that we gave that factor consideration in all cases where we knew that condition existed. In regard to my estimate of the value of the services of John Clay & Company, I based my estimate on what I mentioned just a few minutes ago—the trade mark and the good will of John Clay who has been in business for 50 years. I think I have made it very cheap. I have no knowledge of the time the partners of John Clay & Company actually devoted to the operation of the commission business at Kansas City. They kept very close touch with the matter.

Whereupon the witness was excused.

JOHN P. SWIFT, who had previously testified, resumed the stand and testified as follows:

I came out here in the latter part of 1910. I had been at Cornell four years and then I had a short period in the south with a lumber company. I started in driving hogs from the trains to the hog yards. Later I advanced in the scale of employment and assisted the salesman in the hog yard in selling crips and odds and ends, feeding and watering hogs and sometimes in the office. At times I was used [fol. 847] to straighten out difficulties in the country where loans had gone bad. I traveled for the firm soliciting new business. All through this period I was familiar with the bookkeeping and the accounting and of the office. During the last four or five years of my service at the yards I was quite active in the affairs of the livestock exchange. I never purchased any livestock but I have sold hogs and sheep on stockyards and bought and sold livestock in the country. I have spent a great deal of the firm's money, running into several hundred thousand dollars every fall paying for the country purchases of lambs contracted in the spring for fall delivery. I will say that the duties and the activities of the livestock commission business are comparable to those of an insurance business. All I have got to sell is my personal service. I am paid on a commission basis in the insurance business and my earnings depend solely on the success that I have in writing insurance. The product I sell has got a set price, largely set by State regulations.

Redirect examination:

I will say roughly that the customary compensation for insurance brokers, depending upon the class of business, ranges from 5 to 20%. I think the bulk of the general agents would have a differential of between 5 and 12½% over what is paid to the broker.

If I were going to launch in the commission business tomorrow, there are a great many men down there that we [fol. 848] would be glad to hire at the figures put down. As far as I went personally, and I think the committee generally, there was a lot of things taken into consideration. In the first place, most of the men on that committee had a pretty fair knowledge of the business and of the personalities. As I recall it, there was only one man on that list that I did not know, either personally or have enough

information regarding his business. We talked to Charlie Haren about that man. So we started out with a background of personal knowledge concerning these people. We did not go at this thing like an agricultural stock judging team. We operated like a bunch of cattle men going out into a pasture where they looked the steers over and said that they would give $50 a head for them. I think the judgment of a committee of this kind will come far closer to reaching their actual worth to the community in general for the kind of service they do than any statistical report that you might be able to work out from the figures of the firms by whom they are engaged.

Mr. Houston said he belonged to an organization that had offered my brother more money than we assessed him at. The first thing the committee desired was to be assured by Mr. Gage that the figures we put down would not be made available for inspection by the men involved, because we felt that there were some of them that were going to be pretty insulted at the way we rated them. Others, of [fol. 849] course, would have been flattered. We had a lot of things to be considered. In the first place we took the man's age, his experience, and his ability to go out and get business and to hold it. We considered his personality, whether he would make a good impression or bad impression, whether he was lazy or industrious, the kind of business he was engaged in, whether he had a western business or a well balanced native business, whether he was a buyer or a seller, what he did personally, where he fitted into the scheme of things, and last and not least his reputation and integrity. We were sitting around the table and each member of the committee had a copy of this memorandum appearing in Respondent's Exhibit 32. We had a good deal of discussion about every one of these fellows and people would advance their personal knowledge of each particular individual. We had no instructions and we had no requests other than this memorandum which speaks for itself.

Recross-examination:

In a general way our committee had a knowledge of the extent to which these men whose services we appraised command a following in the country.

Whereupon the witness was excused.

J. W. HUDELSON, a witness called by the Respondents, after being duly sworn, testified as follows:

I live at Pomona, Kansas. My main occupation is farming, and I have been engaged in the livestock business ever [fol. 850] since I was a small lad. One year we handled 14,000 cattle and another year 12,000 cattle. It runs from six to eight or ten thousand cattle a year. The past year we handled about 5,000 cattle. I am interested in two banks. I sell principally all my livestock at Kansas City and St. Joe.

I have patronized the Kansas City market for 40 or 45 years.

I am on the board of directors of the Kansas Livestock Association. I was a member of the committee in determining the fair cash value of the various individuals who own commission firms, as is expressed in Respondent's Exhibit 32. We started about 9 o'clock and got through about half past five that evening. Mr. McClure as chairman went through the volume there, called the names off, and a great many of these people I personally knew. Once in a while I would think it was too low or another member would think it was too high, but we would end up unanimous in our judgment what the amount should be. I was present when Mr. McClure put in the final figures. I recall the memorandum which is contained in the exhibit. There is a relation between a commission man and his customer that does not exist between any other line of men that I am acquainted with. The commission man is a little closer to his customers. He has had customers for 20 or 10 or 5 years. The man that is feeding a couple of loads of cattle out in the country looks forward to coming to Kansas City, and being with this commission man, a man that can hold the business for a term of years, or for a business career, has [fol. 851] a value that is pretty hard to determine. He can go to work for a commission man and carry his trade with him. A man that can do that is worth more than a man that just has not any personality. When I know a man is honest and tells the truth all the time, that is a factor that I put into a man's value. Sometimes an individual will change from one firm to another because he may be offered a lot more money than he was getting. A list of customers is his asset. That determines what he might be worth to a commission firm, in my judgment. I have observed sales-

men operating on these public markets at St. Joe and Kansas City. In order to be a competent salesman he must be a good judge of livestock, and I don't believe salesmen can be made, I think they have got to be born. A salesman has got to be a good trader and be acquainted with buyers. He has to be a reader of human nature. In my personal opinion I take those things into consideration. Once in a while we might be apart $500, but we would discuss the matter and agree. One would put on a little and the other would take off a little.

I would say that the commission business is a highly competitive business. I read Mr. Mercer's testimony and agree with the most of it. I have always contended that there were too many in the business. It is a slight run today, but one-third of the people could do the work, with the exceptions of a few days in the fall of the year when there are heavy runs. I would say half could do the business that is [fol. 852] done at the stockyards here. If there were half the men engaged in the commission business, I think we would have a more stable market, and we could have some control at least over the volume of cattle that would be shipped on the various dates. There should be competition between individual agencies for business because it spurs them on to greater effort and more efficient service.

Cross-examination:

I ship practically all my livestock to one firm at Kansas City. I have shipped to different firms. Of late years I have shipped to John Clay Commission Company.

I have never been engaged in the livestock commission business. I don't have a membership in the Livestock Exchange. In the shipping season I am here at the market pretty near all the time during a few days of the week. I was asked to act on that committee on a Friday before the meeting on Monday by long distance telephone. James Reid of John Clay Commission Company called me up. When I came down here I had no idea what I came for, or what was expected of me. I do not know how many of these men whose services I helped to appraise that I know, off hand. I would say that I know personally the most of them. We have livestock organizations and we have conventions and we meet these men at conventions. I have known most of these men, a great many of these men from

boyhood up. They are most of them younger men than I am. They have grown up under my observation here since I have been coming to this market. When I am down [fol. 853] here at this market I visit around with different people, watch the sales, and go around and see other people's cattle. I have bought quite a good many cattle on the market. I would say that I was guided more by the element of honesty than any other, in my judgment. I probably did not give th s memorandum as much consideration as I should have given it. We did discuss the volume of business that the firm did and the qualifications, the individual work and the present opportunity, and their honesty as we personally knew them.

Redirect examination:

In making up these valuations I had before me all of these individual sheets, 1 to 153, and the information that was on those sheets. I gave attention to that information as well as my personal knowledge.

Whereupon the witness was excused.

Norris Broaddus, a witness called by the Respondents, after being sworn, testified as follows:

I am president of the Stockyards National Bank in Kansas City, Missouri, located across from the Livestock Exchange Building. Our business is largely with the industries located at the yards, particularly the livestock commission men, the traders, cattlemen in the country, and the country banks. I have been connected with that bank 12 years. I went to the yards in 1902 and was yard boy for a commission firm and later I sold cows for them. In 1905 I went with Morris & Co. as a cow buyer and later on as a steer buyer. In this period I became acquainted with a good many of the owners of commission businesses. I have practically grown up with them and I feel that I [fol. 854] know them quite well. With regard to the qualifications essential to competent salesmanship I would put integrity first and closely following that ability and general knowledge of the business. Acquaintanceship with the market and buyers on the market is desirable. A man

must have some natural aptitude for trading, as well as be a good judge of livestock.

I met with the other gentlemen whose signatures appear on the first page of Respondent's Exhibit No. 32. This committee met in a rather informal way and as the different members of the livestock Exchange were mentioned we tried to arrive at a fair valuation, in our opinion, of their services, taking into consideration their integrity, their ability to trade, their general knowledge of the business, and the years they have devoted to it. I think we had the memorandum before us. I feel reasonably sure that I read the memorandum, but could not say under oath that I did I did not know exactly what was expected of the committee prior to our meeting. The figures as to the fair cash value of the services of each individual were arrived at by the opinion of the entire committee. I saw Mr. McClure write those figures on these various sheets. The committee attempted to arrive at the sound business judgment expressive of what this purports to express. We took into consideration what data we had, but we had very little data. We did have the data appearing on these sheets 1 to 153. We had the benefit of personal acquaintanceship [fol. 855] through the various members of the committee with many of the individuals named. There were only two or three names mentioned that I did not know. There was a sheep man that we did not know. One member of the committee called up an outsider to get some information, and that related to this one individual. I believe the amounts set out are representative of the fair cash value of services upon a per annum basis of the individuals listed on these several sheets to the organizations with which they are connected. It is an amount expressive of the best composite judgment of these members whose names are signed to the certificate. I think competition between different selling agencies for business promotes the efficiency of operation. Each of these commission firms is right up on its toes trying to make its sales please its customers, and with the hope of attracting new business. I would say that the services of a competent and efficient salesman of livestock is of value to the man whose livestock they have for sale. I have noticed the widening spread in the value of the different grades of cattle, and I would say it has increased the responsibility of the salesman.

Cross-examination:

I have not been employed by a commission firm since 1905. As vice president of the bank I made part of the loans and tried to obtain any desirable new business possible. I have been president since 1928. I would say around one third of the commission firms located at the [fol. 856] yards handle their business through our bank. I do not hold a membership in the Exchange.

This is the first time I have ever been called upon to place a value upon personal service. When the committee met, it seems to me from memory that Mr. Biggerstaff told us the purpose of the meeting and then left us. A number of the persons whose services we valued have their accounts with our bank. I would say that the information which we had with respect to these accounts in no way assisted in any way in our conclusions. I would say that in a general way we had in mind the principles laid down in the memorandum when we made this appraisal. I would say that the appraisal was merely the committee's opinion or valuation of the party's services figured in respect to integrity, ability to trade, his personality, his years spent in the business, and his knowledge of the business. It happens that I personally had traded with a great many of these men and I naturally remember their manner and ways of selling livestock. That was when I was a steer buyer for Morris and Company.

Redirect examination:

The individuals named in this report who are stockholders in our bank are Henry Elrod, F. L. Merchant, S. G. Smith, C. H. Bates, and F. G. Robinson. They have small holdings and the fact that they owned stock in the bank did not affect my judgment. Friendship did not enter into my judgment of these values. I was trying to be fair.

I quit the commission business because I obtained a better job with Morris and Company. I got more money. I went [fol. 857] in the bank because I thought I could better my personal business position. In passing upon loans or advancements to commission firms, we take into consideration the borrower's integrity and his financial responsibility. In the case of a partnership or an individual we would consider the personal net worth in granting credit, if he

would endorse the paper personally. We would consider net worth by all means in extending credit.

If a purchaser had a cashier's check drawn on some bank at home which he brings with him to pay for livestock and it is deposited with us we would give the firm immediate credit like we do on all their items but it would not have any effect on the float charge. It would take us several days to get the cashier's check into available funds just the same as it would the farmer's check. If the countryman brought Kansas City exchange with him from his home bank, then they would be immediately credited and there would be no float because that would be available. Practically none of the countrymen bring Kansas City exchange with them.

In connection with the operation of the bank, I have had to employ men to carry on the work of the bank. I have considered their ability in connection with the amounts which we paid them.

I would say that there has been a large number of bank failures in Missouri, Iowa, and Illinois in 1930. That has added to the hazards of our business and the commission business.

I would say that the Kansas City Livestock Exchange [fol. 858] was of immense value to the entire livestock industry.

Recross-examination:

I am not in position to state what losses were suffered by commission firms on the Kansas City market during the years 1929 and 1930 as a result of bank failures.

Redirect examination:

In my memory during the 12 years that I have been in the bank I can remember of very few instances where any people from out of town brought Kansas City exchange. I think I would be safe in saying practically none at all. As far as I know it is not a practice to pay in Kansas City exchange or currency. If a rule should be put in force at Kansas City requiring cash payment immediately upon purchase of livestock or Kansas City exchange to the amount of the purchase, such a rule would divert business to other markets such as St. Joe, Omaha, and Wichita.

The market agencies who are depositors in my bank do not keep shippers' proceeds accounts.

Witness Broaddus excused.

LYLE A. STEPHENSON, who previously testified, resumed the stand and testified as follows.

Cross-examination:

I operate a general insurance agency and sell all lines. I have quite an extensive clientele among the commission firms on the Kansas City Market. I write life, automobile, [fol. 859] public liability, employees' liability, and fire insurance for them. The business is written in the office, but I do not personally write the policies.

Except during American Royal preparations, I suppose I go down to the yards once every ninety days. I own a farm but do not raise livestock any more. I am helping to finance one of the feeders at the present time. I do not do a general loan business on livestock. I think the last time I was out in the stockyards observing the purchase and sale of livestock was in November. I think I am able to judge salesman's ability by walking through the yards.

I know a great many of the commission men but I could not tell you the actual number. I know most of them. I have not observed all of them operating out on the market.

I have never made an appraisal of personal service for the purpose of testifying. When making this appraisal I had in mind other lines of service such as general commercial and banking lines. I am a director in the Morris Plan Bank. I had the insurance business in mind. I think of men employed by concerns like steel companies around town and men employed by concerns like mercantile stores, retail mercantile stores, and men doing various lines of manufacturing work. I have seen the payrolls of many of these establishments. Presidents of large concerns reveal to insurance men many of their intimate business secrets. I am familiar with the earnings of many men here in town occupying similar positions to those men at the stockyards. [fol. 860] I compared the position of a man in a steel company with a man engaged in the livestock commission business. In thinking of a man like J. C. Swift, I figure

what men of like ability were receiving in other lines of business. William Allen, President of the Sheffield Steel Corporation, in my opinion is no better man than J. C. Swift and I fancy if you will examine the earnings of Mr. Allen and those of Mr. Swift, there will be a rather wide separation between their earnings or the salary which they draw. Mr. Swift is unquestionably one of the finest protectors of the American farmer that we know of in the United States of America. He has done more work for them. He is a man of wonderful resourcefulness and sincerity of purpose, and he does not receive any money at all like he is entitled to. And there are many more men at the yards just like him. He is sincere and honest, and the interest of the customer comes ahead of any profit that he might hope to make.

The same thing applies to Henry Elrod and many other men at the stockyards. They work their lives out for their customers before they think about the commission they are going to get. And when I referred to the great protectors of the American farmer I was thinking of honesty and ability combined. I don't think Mr. Swift buys or sells livestock, but he might advise the farmer in one sense of the word.

I regard the figures set down in the appraisal as too [fol. 861] low for the ability of the men. They could unquestionably make more money than they are making now in other lines of endeavor where governmental interference does not upset their future. By "governmental interference" I mean constant harassment of the various market agencies by the Government.

One of the principal harassments that I know of at the stockyards is the various requirements of the government in making out reports that according to the opinion of the best economists in the country have no value whatever and cause the livestock men to employ extra help to keep these reports. I did not give consideration to that in making my appraisal.

I would not say that it was a compromise figure. I might say that I thought this man was entitled to more money and another man might think he was not entitled to so much. One might say $4,000 and another one $6,000 and we would make it $5,000. I would not think the figure is too low in each instance, but I would think so in the majority of cases.

I considered all the facts that were presented there on the sheet that was handed to us. I also considered the personal knowledge of the men.

I think I can explain just how I arrived at my conclusion with respect to this appraisal. For example, I have known Ed Elliott since 1903. He is a man of high integrity, a hard worker, and absolutely conscientious. He has been in business for 35 years. If I would work for 35 years and [fol. 862] couldn't make any more than $5,000 a year I would get out of the business. The explanation which I have made with respect to Mr. Elliott is the general line of procedure and discussion which we had in our committee in arriving at these figures. I do not know Les White and Walter Land of Firms 17 and 79 respectively. I can explain how I arrived at the appraised figures in that case. I would defer to the opinion of other men who knew them personally. Some member of the committee might know these men personally and where I could not supply the information I would accept the judgment of the other man.

Redirect examination:

I have some very intimate friends down there and I would not or did not advocate a higher compensation for them on that account. I think it was pronounced throughout the day that greater deference was paid to the opinions of Mr. Hudelson and Mr. Houston, the users of this service.

(Whereupon the witness, Stephenson, was excused.)

A. H. Warren, a witness called by the respondents, after being duly sworn, testified as follows:

I am engaged in the livestock commission business at the Kansas City market. I am connected with the firm of Greer and Company. I have been connected with the livestock business all my life. I first worked in the commission business in 1889 and then I was away for three or four years and have been in the commission business continuously ever since.

[fol. 863] Before I went in the commission business I worked on a farm and rode on the range in New Mexico

seven years as a cowboy. I have been in the commission business in Kansas City for 35 or 36 years. I sell all classes of cattle, fat steers, or butcher stuff, mostly butcher stuff and stockers and feeders.

I have been associated with Mr. Greer in this business for 26 years. I am not an owner in the business. I have observed quite a great many changes. I went to New Mexico in 1885 and you could look over the plains and see great herds of cattle most anywhere. Fifteen years later I went back and you could look out and there was just an expanse of prairie with no cattle in sight. Those ranges have been fenced in now.

Our cattle were usually marketed in October. They came in train loads. That is not the general condition of marketing today. Lots of them are lucky to have a carload even from that southwestern territory. In those days the price range was much lower. There have been marked changes in the handling and conduct of the commission business. The cattle were coming in larger bunches and sold much easier. The buyers seemed to be more plentiful. Today we have to work a whole day to get a buyer on a particular bunch of cattle. We have to sort them in a great many different bunches. I own a farm and have cattle and hogs on it. I think the best service of a commission man *is* to his customer prior to the time the cattle is placed on the market is to keep in touch with the customer and [fol. 864] know the class of cattle he has or the class he wants to buy, and try to sell or buy for him to the best advantage.

In one instance a customer made seven hundred dollars by taking my advice to drive his cattle from the shipping point back to his farm rather than shipping them at that time. That entails a lot more effort than it did years ago, for then the market did not fluctuate as it does now. Not only the work, but the responsibility of the commission man has increased.

Mr. Greer is a competent cattle salesman and has been on the market longer than I have. He has been there about 40 years. The test of a cattle salesman's efficiency is largely the rapidity with which he could dispose of his cattle on the market. It shows his judgment and his way of trading. The point is to know when you are bid a good price. I seldom take the first bid.

We work the cattle out sometimes too long, but as a rule we gain by working them out. A salesman must have some initiative and must also have acquaintance with buyers. The idea is to get a buyer that wants that particular class of cattle. We do not do a large business and we know all of it in mind. We aim to keep in contact with them and keep them advised on the market. We do very little advertising in the papers.

Mr. Greer is in the yards every day. I usually get down to the yards about eight o'clock. We have yardmen in our [fol. 865] employ. It is generally about one or two o'clock when we complete our work in the yards. Sometimes it is three o'clock. I do not do a great deal of office work after that time except write personal letters. There is someone who handles the office work.

We have worked on the plan that a satisfied customer is the best advertisement we could have.

My firm has not sent out market letters or circulars for several years. After the radio came in we thought it was a superfluous expense. We had some complaint about it, but not a great many. We have received very few complaints from our customers about discontinuing the subscription to the market paper. The policy of this firm is to let the service we render be practically the sole factor in getting and maintaining business. Frequently a customer for whom we have been doing business a number of years will bring in a neighbor.

Cross-examination:

When I first began selling cattle I sold butcher stuff. I did not sell any cattle until after I came back to Kansas City, in 1893. I worked for several different firms and I worked for Greer & Co. I do not give very much attention to the farm. I go down on week ends sometimes. My firm gets cattle throughout the entire year. Everybody's business is heavier in the fall. I am usually out in the country on Saturday visiting my customers. Our trading is largely close to Kansas City, and I can run out on Saturday to see a bunch of cattle. I don't get around to visit all my customers but wherever they call for me I go.

[fol. 866] Sometimes I sort and grade the cattle ready to ship, but as a rule I point out certain ones that do not need to come and they will do their own sorting. My firm does

not maintain a sheep salesman. Mr. Morgan, who sells for different firms, sells our sheep. Our business has fallen off some. It is more expensive handling business, and we have to sort cattle closer and weigh in a number of different lots.

Redirect examination:

There was a time when my firm was able to make more money, and I got a good deal more wages than I get now. My salary has been cut on account of the lack of revenue. My health has been extra good, and I cannot remember a day that either one of us has been away from the business on account of health. The audit of our firm shows that in 1929 Mr. Greer drew $3,000 and I drew $2,550, and the firm sustained an operating loss of $3,773.60. I don't think that situation is due in any way to lack of selling or buying efficiency on the market.

Whereupon the witness was excused.

FRANK R. STANDISH, a witness called by the Respondents, after being duly sworn, testified as follows:

I am a stockholder in the Drumm Standish Commission Co. at the Kansas City Market. I first entered the commission business in 1892, and I went to work first as a bookkeeper. I had ridden on the range before that and knew a [fol. 867] little something about cattle. I would go down and go out in the yards and help yard the cattle. I did not need to get to the office until after 8 o'clock. I would like to look over the cattle and mark my idea of what I thought each pen ought to bring. When the tickets come in I would see how near I came to fixing the right values on the cattle. I got a very good idea of the value after two or three years.

I sell all kinds of steers. Western Colorado produces most of the Colorado cattle that we sell. There is a difference in the value of steers which results from the origin or the location from which steers come. The fat cattle from Nebraska right now will bring a little better price on the market than the same cattle coming from Kansas or Missouri. A salesman has to keep posted through his experience or his connections on these differences in value that

relate to the origin of the livestock he handles. Within one location cattle of the same quality will differ in value according to the methods of feed employed. We keep posted on this by knowing the man that fed them and how he feeds and handles his cattle.

When I first started in, the buyers did not care or ask who the feeders were. In the 90's there was not so much sorting. Now cattle must be sorted and graded and also weighed for ownership. If we try to get a buyer to bid on a string of cattle now, the chances are he would bid us so cheap that we could not afford to sell them to him. When we got $12 per car we were making lots more money out of the business, paying a yardman $160 a month, than [fol. 868] we are at our present charges when we pay them $125 or $150 a month. We do a whole lot more work now. The cars are mostly 40 foot, and they used to be 30 at that time.

Specialized buying demands specialization in salesmanship. It is absolutely necessary to sort these cattle. The cattle sell for a lot more. The packers used to go down the line and bid on anything. The packers try to get the best material they can, and their buyers are hired at a mighty good price. The factor of shrink plays a part in the selling of cattle. A differential of 1% in the dressing percentage would amount to more on an ordinary fat steer than the commission charge. It requires experience in judging in the live animal the dressing percentage. Experienced people fail to catch it accurately.

The work in the country has become more valuable to the patron and the salesman. We have more requests to go out and look at cattle in the country, and if we don't keep in personal touch our customers will be complaining. If you don't keep in personal touch with your customers, somebody else is going to. It is an advantage to me to know the cattle and know the customer and his methods of feeding. That is a big help because I can tell the buyer and he knows it is just the way I say it is. I assist some of my customers in pasture leasing. We have some inquiries right now and requests to get grass. That will continue until long in April.

[fol. 869] Our business is highly competitive from the standard of the service we render. It requires constant activity in order to maintain the volume of business. We

make an effort to keep our expenses down, and it has been necessary for us to economize. If you let down in the contact with your customers and prospective customers, you would soon lose out. That has been the history of the business. The competition necessitates keeping in the game. The competition between different markets is very keen.

Cross-examination:

We might have 25, 30, or 40 loads of cattle come in on one train belonging and billed in the names of half a dozen different men. That often happens. There is a tendency for shippers to spread their shipments out over a longer period of time on account of the outlet on the market of late years. A man might want to ship ten loads of cattle at a time, but he is afraid to for fear they would get hung up when they get here.

The first thing that induces a shipper to ship to any particular market or commission firm is that he naturally feels like he is going to get as much or more out of his shipment by going to this particular firm than at any other place. The second reason is that he knows this person or this firm and likes them because they know how to handle the business, and he knows them to be upright and on the square. A neighbor who has shipped cattle is well satisfied and he may recommend a firm. Perhaps more than most any other [fol. 870] business it is largely a personal proposition.

Redirect examination:

The maintenance of an outlet for cattle or livestock generally at one of these terminal markets is a most important factor in its operation. The stockyards company here spent quite a lot of money every year on soliciting Indiana and Ohio feeder buyers. The Exchange spends quite a lot of money along that line. Every buyer that we can bring here just helps the price to the man that ships the stuff.

Recross-examination:

Men who are looking for cattle will buy where they think they are going to do the best, where there is the greatest variety, and so forth. A strong buying power in the market tends to increase the prices. If the prices at two mar-

kets tend to get out of line, the situation would tend to correct itself in a greater or less length of time.

Whereupon the witness Standish was excused.

W. J. GLADISH, a witness called by the Respondents after being duly sworn, testified as follows:

I sell cattle for the Gladish Livestock Commission Company. I have been engaged in that occupation about 20 years. I started selling cattle for George R. Barse who was in the commission business at Kansas City. The employees bought out the Kansas City office.

[fol. 871] I started in business under the name of the Gladish Livestock Commission Company on January 1, 1919. I have a brother that is a partner with me. I have been on the Kansas City yards 32 years. I started out to do yard work.

I have one yardman now that I am paying $165 a month. That is the same work that I was doing at fifty to sixty dollars a month, except he does sell the veal calves.

My brother and I are equal owners of this business. When I started, I could not get an office in the Exchange Building. I made arrangements with William Leitch Sheep Commission Company to office with them, and I am there yet. I have not tried to rent a separate office. I know I can conduct my business more economically by using office space with the Leitch Commission firm. I started in a small way to try to do it all ourselves, and we are continuing the same way.

We pay thirty dollars a month for the space we occupy. My brother handles our books. He also sells the hogs. Leitch sells the sheep if we get any. The commission is divided in the selling of sheep. We could not afford to have a man for what few sheep we have.

My brother and I are members of the Livestock Exchange. I think I have been a member about fifteen years.

We have done very little advertising, and spend very little money in connection with business getting. The bulk of our business comes from previous acquaintance. A good [fol. 872] many fellows that are shipping to me are old shippers of the Barse Commission Company. They should be acquainted by this time with the kind of service that I

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am able to give them in selling their cattle. A satisfied customer recommends us lots of times to his neighbor and we get some business from that source. I get quite a good deal of business that comes from Buffalo and Onega, Kansas.

We cut out expenses somewhat if our general trade lives in the same general territory. It cuts traveling expenses some. It is true that we would gain an advantage if business came from a wider area since crops in one area would not affect it so radically. I sell all kinds of cattle except the calves.

I try to keep in close touch with my customers' cattle operations because it is a big advantage to know how these cattle are being handled. I counsel and advise with some of my customers in regard to the time to ship to market.

A salesman has to work a good deal harder now than they used to. When I first came here we got a good many of them by train loads and now it is usually a single load and possibly two or three owners to the load. Most of them now are plural ownership consignments with more than one owner in the shipment.

Firms that have a larger volume of business have their work divided more than I do. I always feel that I can give it more personal attention and handle it all myself.

Most of my customers are customers who shipped to [fol. 873] Barse. We have to sort quite a good deal more now. It changes the appearance of the cattle and there is a lot of times that we find buyers for one class of cattle, and if we did not have them sorted he would not buy them.

The $11.00 spent for newspaper advertising shown in Government Exhibit 14-17 is the entire sum of my expenditures for that purpose.

I get down to the office about six thirty or six forty-five in the morning. This time of year I get away about five o'clock in the evening except on Saturdays, when I get away at noon. At lots of times in the Fall I am down there until seven and nine o'clock in the evening. I help with the yard work and office work and have letters to write to go out with the account sales. I also buy cattle. I own a horse. I use my own automobile. My brother owns a car and uses it some in the business. I have not made it a practice to charge up depreciation on our automobiles to the business. I charge the gas and oil.

Recross-examination:

My brother is younger than I am and went to work for Barse possibly ten or eleven years after I did. He has been hog salesman ever since he has been with my firm. I draw $300 a month salary and he draws $200, and the balance is split, if there is anything to split. I can do business more economically by officing with Mr. Leitch. The rent on our floor is $25 a month for the blank office. Then we would [fol. 874] have to buy our furniture and fixtures. Leitch has a girl in the office who answers the telephone and takes messages. If we had our own office we would have to have some one in it. Our telephone rate is cheaper. Leitch does not do any of our office work for us. I have not had any experience in employing a salesman. The amount that a salesman can get for his services would really be based on the volume of business that he would control and what you might have for him to do. I think I know most of the cattle salesmen down at the yards. I am not so familiar with the hog and sheep men. I could not give the value of their services if the names were called off to me because I have not hired them and I haven't had them work for me. I would not know what business they could handle or what value they might have. The personal acquaintances that the salesman might have in the country would be worth something to a man in that business. I don't think that a man who is not engaged in the commission business but who knows the salesman personally could fairly estimate what that salesman is worth. I could handle more business with the existing organization if we could get it.

It has grown more expensive to conduct the commission business each year. There are days when our firm receives no cattle at all. We have a fair truck in business.

Redirect examination:

I know John Hudelson of Pomona, Kansas. I do not know anyone that has been a larger patron of this market [fol. 875] or been at it longer than Hudelson. I think Mr. Hudelson is handling somewhere around ten thousand cattle a year now. I see him in the busy season of the year when the cattle are coming in.

I sell all my cattle the day they are received for the most part. I cannot always sell them even if I were willing to take the price. Sometimes we get the kind of cattle that

you cannot find a buyer for and at other times the owner holds you up for too stiff a price and you cannot get it and have to hold them over. I forwarded cattle to other markets last week. I worked on them Thursday and Friday and took care of them Saturday and shipped them out Saturday night to Chicago. I could get all I thought they would bring but not what the owner thought they would.

Recross-examination:

My horse is as good as the average horse down at the yards. We send out a circular letter to about 250 cattle firms. I know all those fellows and there are a few others than don't ship to us.

Redirect examination:

There are horses in the yards that are worth more than my horse. I would not want to pass judgment on the value of all the horses without some study and consideration. If I were going to express an opinion as to what any man was worth as a salesman, I would want to give it quite a good deal of consideration and study.

Whereupon the witness was excused.

[fol. 876] THOMAS F. McDONALD, a witness called by the Respondents, after being duly sworn, testified as follows:

I am engaged in the livestock commission business for McDonald Livestock Commission Co., which is a corporation of which I am president. Associated with me are my son and Mr. John and Ed McGrath. I have been connected with the Livestock commission business at Kansas City for 37 years. The corporation has been in existence for 37 years. Before I organized the corporation I worked in the yards just a short while. My main activity in connection with the business was buying and selling cattle. The other salesmen or buyers of cattle are the two Mr. McGraths and Mr. Tuley, the hog salesman. My son does yard work and helps at the office.

My firm is not advertising extensively for the purpose of expanding our operations. We try to get our patronage through services. Our old customers have quite generally

stayed by us. I had a customer in today with two cars of cattle who shipped to me 37 years ago. He has been shipping to me in this intervening period. Our business has gotten down to the cattle business now. The packers have taken our hogs from us by direct shipping, which has decreased the revenue derived by the owners from the business.

In the conduct of my business I have been endeavoring to be economical in the management but not as much as I should have been in view of the times we have gone through lately. It requires an extra man to bring them over from [fol. 877] the gate whereas previously when they were shipped in our regular man would bring them from the train to the selling pens. In my experience the expenses of handling a given number of head of livestock have tended to increase on account of the increase in the truck in stock, and in the manner of buying. For a good many years a buyer would come in and buy all the cattle in a pen, and he would have them classed altogether. Now the number of sales and drafts have increased and it is a rare thing on butcher stuff that there won't be one buyer buying a few head and another one buying a few more head. The number of head per draft has been growing less each year. That involves increased work and increased expense.

My business does not yield as much compensation to the owner as it formerly did.

Three owners are listed as having drawing accounts in the sum of $3600, $2400, and $1800, respectively, and these men were interested in the concern as stockholders. According to Government Exhibit 14-8 there was an operating loss of $1,286.22. Nothing was set up on the books as return for invested capital.

I did not do any newspaper advertising in 1929. There is an item of $506.19 that was for the Drovers Telegram. The postage on it alone was $102.59. We send out 500 circulars a week.

Mr. Morgan sells our sheep.

[fol. 878] With respect to Government Exhibit 15 it shows the unit cost of handling cattle and calves to be 67¢ per head for any firm, with a general average of 53¢ for all the firms. I don't believe that the firms can handle the business for 53¢ a head. When I was on the Board we took the expenses of all the firms and the earnings and, as I remem-

ber, it was 77¢ a head. We do very little soliciting, and that is one of the reasons for small business and a smaller expense in getting the business. I would not give $100 for the front page of the Kansas City Star for advertising purposes. Years ago we spent $2,500 in newspaper advertising and all we got was an inquiry from a lady who wanted to ship us goats and another party who wanted to ship us cotton mules.

In every respect we handle our business as economically as is possible and give good service to the cusomters. The advice of commission men in the handling and marketing of livestock is invaluable to customers. It is just as valuable to him as salesmanship. The open competitive market for livestock is the only salvation for the owner of livestock.

Cross-examination:

I know that many of my customers ship livestock to my firm exclusively, and they have done that during the entire period that they have been shipping to market. A lot of our customers are dying off and we are not taking on enough new ones to take their places. The bulk of our [fol. 879] business comes from these regular customers. We have had the same organization that we now have and the same set up of salesmen for 25 years. I sell principally steers. Our circular advertising is of very little value. Service is first, in my experience, and then personal letters and personal solicitation. Our soliciting consists principally in going out to see cattle we have bought to appraise their value and advise with the owners regarding them. I make the bulk of those trips. The McGraths own some pastures and handle cattle on them. They give some of their time at the week ends to that. Our firm mimeographs its own circulars. We run them on our letter heads. We generally get ten thousand letter heads at a time. I would say it is a common thing for a salesman to handle five cars in a day. The decrease in the size of drafts has been within the last few years. We got $3,000 for the membership which we sold recently. Our firm has had very small losses during its history from the sale of mortgaged and stolen livestock. I would say in expenses and all from loss from handling mortgaged and stolen livestock it would probably be $3,000 in the past 37 years. We have not had one in a number of years. If we increased our soliciting activities

we probably could increase our business. If we did, we would have to solicit in the same field where other commission firms are soliciting, and if we were able to increase our business it would mean a loss in business to some other firm. Most of the business that we have lost, aside from what was taken away from us by the packers, has been through the death of the parties that shipped at that time. I would say that there has not been very much change in the compensation paid yardmen since the War period. We have not lowered salaries and other costs have increased.

(Whereupon the witness was excused.)

[fol. 880] HARRY KENNALEY, a witness who had heretofore been sworn and testified, resumed the stand and testified as follows:

Direct examination:

At the time trucked in livestock are unloaded they are in the hands of our men that take them to the sales pens from the unloading gates. We don't handle very many fat cattle, by truck in this market. Sometimes the hogs of different owners are bunched together and before they are driven from receiving pens they are marked with a scissors. A man in charge of the gate marks them across the back, the hip, or the side. We keep a record of the stock that we receive, not so much by the name of the party as by the marks. Besides the man at the unloading gates there are two other drives that take them to our sales pens.

One man used to sell 25 or 30 carloads of hogs a day. That would be two or three thousand hogs. I don't think it would be humanly possible for one man to sell that many hogs now. Now you have to sell sows at a different price and the underweights at a different price. They will buy the light ones and weigh them one way and the heavy ones another way. The reason for that is they take the light sows and put them in with their good hogs and kill them right along with them.

On account of the market being so draggy this week the salesman practically has had to oversee all the sorting. The salesman and the yardmen work together in the sort-[fol. 881] ing. The number of head which a salesman can

sell depends absolutely upon the condition of the market. One man cannot do very much now for the reason that the shippers take 35 to 40 per cent of the hogs off the Kansas City market and they have orders for different kinds of weight. Each one buys a different class of hogs. If one salesman were trying to sell all those different hogs, one of these buyers would be getting away from him before he finished with another buyer.

There was ninety cents a hundred spread on finished hogs yesterday.

Yesterday I went out to Drexel, Missouri, to see a man who had 77 hogs and wanted to know whether they ought to be shipped in a freight car or by truck. He trucked the hogs in, and the shrink was four pounds per head. The shrink would have been more if they had been shipped by rail.

This country work is done all through the week the same as on Sunday and every other day. We get through with our work at the yards ordinarily from two to five o'clock. Yesterday we started at four o'clock and got back from Drexel at ten o'clock.

Two years ago there were about six commission firms that did not have a hog salesman. They would have the hog salesman for another firm sell the hogs for them. That was more economical from their standpoint because they never had enough business to retain a salesman.

I have made practically a house to house canvass of [fol. 882] northern Kansas in the last eleven years, and in the last four or five weeks I have made four or five trips up there. I went up there to see why we were losing business out of that territory. We not only had the big packers but we were having some mighty strong competition out of the Hygrade plant. I, myself, bought hogs for the Hygrade Packing Company since I have been in the commission business. At the time I bought them it was the Wolff Packing Company. They are buying no butcher hogs at all now. They are buying a few packing sows.

The firm of Rountree and Banks was in business at Kansas City for six or seven months as an order buying firm. It has now an order buyer at Springfield, Missouri, National Stockyards, and Peoria, Illinois.

Cross-examination:

In the last three or four weeks I have spent several hours at the Fowler Plant here as they are getting to be quite a competitor of ours in the truck in consignments. I go down there to see the handling of them and to see who is bringing them in there.

I have a personal acquaintanceship with probably 90 per cent of the truck drivers that come into Kansas City and I see their trucks because their names are on practically every one of them. Sometime or other they come in our office and I find out from them whom they had over there. We inquire from the truck drivers from time to time where [fol. 883] these men have shipped their stuff.

I am on the market every day except Saturday. Sometimes I am here on Saturday. I spend about three Sundays out of four in the country. I spend parts of 12 to 14 days a month in the country. It is according to the market whether I sell the major portion of the hogs received by my firm. I sell the hogs and have two assistants that help me sell. I personally supervise their work. They help to sort and weigh and they are also office men. They help to make out account of sales.

These assistant salesmen also help in driving the hogs from the unloading chutes to our pens and in feeding them.

On Schedule No. 2 of Government Exhibit 14-51, which is the audit of our business for the year 1929, Salesman No. 4 was a yardman in 1929. He is not in our employ. No. 6 at that time was an assistant hog salesman. He is not in our employ at the present time. No. 1 listed at a salary of $3,000 now gets a salary of $5,200 a year. The salary of No. 2 is the same as it was in 1929. The salary of No. 3 is now $2,100 instead of $1,656. No. 1 is not the man who is with us now at $5,200. Yardman No. 7 would be stricken off.

I do not think a salesman can handle over one third as many hogs as he could a few years ago when we had open and competitive buying on the primary markets.

On the day we had 1,500 head by truck we also had 12 or 13 carloads.

[fol. 884] Fo-r or five weeks ago I made — seven or eight hundred mile trip in a house to house canvass why the shippers out in certain parts of Kansas were not shipping to the Kansas City market. A good part of that business

goes into Topeka, and the Hygrade Packing Company. The reason a lot of them does not come to Kansas City is on account of the increase in good roads in that vicinity, and the competition that the direct points offer to our market.

Redirect examination:

There is no use to solicit rail shipments to the Mistletoe Stockyards because we cannot get the prices for those hogs on our market that they are giving for them at Fowler's. They sort and grade those hogs so closely that we cannot compete with them.

This market is generally about a shipping differential under St. Louis and Chicago. It would have to be or the hogs would not come here. With packing plants as large as the Armour plant or the Swift plant at Kansas City, the packers have to do a tremendous amount of business, and if they depended upon the hogs they bought on the open market in Kansas City they would not compete with the small packers in the business. If they went into the market and bought these hogs, we would receive higher prices because this market here generally is pretty well out of line with other markets.

Direct buying and private yards are the reason there has been a decline in the receipts of hogs on the Kansas [fol. 885] City Stockyards.

Whereupon the witness Kennaley was excused.

J. B. Lingard, a witness called by the Respondents, after being duly sworn testified as follows:

I am a stocker salesman for Ryan Robinson Commission Company. I have acted in that capacity for eight years and have been at the stockyards ten years. I used to feed cattle in the country and was a regular shipper.

Some days we sell the bulk of the stockers and feeders to order buyers and farmers, and some days we sell most of them to traders. Stockers and feeders are cattle that are not suitable for killing purposes and have to go back to the country for more feed.

The first thing I do is to classify the cattle according to

weights and quality and try to make them as uniform as possible. After I get them sorted I start to look for somebody to buy them. Sometimes I have to go and rustle buyers and sometimes they come in and buy what I have without my having to hunt them.

I buy some stockers and feeders for our firm in the afternoons.

The stockers and feeders coming to our firm are pretty well distributed as to the section of the country from which they come. In buying stockers and feeders for customers, I usually find out what my customer has in the way of feed [fol. 886] and how long he expects to keep the cattle, then we ride around and look for something that suits him.

We get quite a good many cattle from the Flint Hill pasture regions of Kansas. During the spring and summer when the cattle are on pasture the owners like to have us come out and look at the cattle about every 30 days. I have done that in the summer time. He wants us to tell him what they will weigh, what they will bring, and when is the best time to ship. I check up to see whether the pasture man is handling them properly. I have correspondence during that period with the owner. We write to him nearly every week.

I always correspond with customers in regard to how their cattle sold and what they have cost, unless they are here. If we wire them, we have to send it collect. I do not handle any of the office work except this correspondence.

Whereupon the witness Lingard was excused.

Bryant Poole, a witness called by the Respondents, after being duly sworn, testified as follows:

I have been in the livestock commission business since April, 1911. I am with the firm of Poole, Dempsey, Rutherford Company, which is a partnership consisting of myself, D. L. Dempsey and James Rutherford.

I was born and reared on a stock ranch. I graduated from the Kansas State Agricultural College. I spent ten [fol. 887] months in old Mexico as superintendent of the livestock operations for a New York Mining syndicate. When I first went into the livestock commission business I did not find myself competent to sell livestock on a public

market. It was three years after I first came on the market that I commenced to sell cattle, and then only the less expensive kind of cattle.

The most recent action taken by the Exchange with a view to reducing the amount of the expenditures of the agency members of the Exchange is the discontinuance of sending the Drovers Telegram to customers, which has effected a saving of something like $65,000. That action was taken during the last year that I was president. I ceased to hold office in June, 1930. We instituted the radio program through which we send the market to the country three periods a day. There were some protests reached the Exchange with regard to the discontinuance of the paper. The people that had a few head of livestock to send to the market were the principal objectors. Action was also taken with respect to the number of days that a member can be in the country soliciting. The Exchange has rules that prohibit employment of solicitors, and rules that prevent its members from spending more than a certain number of days out of each month in the country. Long years ago before I came to the stockyards it was permissible to buy customers' meals. The Exchange passed rules prohibiting that practice and the giving of expensive presents. I consider that the Exchange has been of great benefit and is of great benefit to both members and to the patrons of the [fol. 888] market. If I were in the country producing livestock I would be afraid to ship my stock to a market if it were not supervised by a livestock exchange. I certainly would not do business at a yard without a livestock exchange.

If information reaches the officers of the exchange or board of directors that a member is violating any of its rules in any way, they are immediately brought before an investigating committee, and if he is found guilty he is disciplined. The proceedings are expeditious and prompt. Anyone in the country that has a complaint to make can have it adju-cated by the Exchange. I have examined Respondents Exhibit No. 29 and the forms appearing on pages 1 to 38 of this exhibit are customarily used, in the transaction of business by typical market agencies at the yards. We find it difficult to build up a trained personnel organization that will work and coordinate properly. The three partners accept the responsibility jointly. I might

say that it is up to me to really O.K. or not O.K. a matter. I sell fat cattle and attend to a certain amount of the correspondence, and am just a general advisor in the business. I sell fat steers and I also sell stocker and feeder cattle.

Mr. Dempsey helps me with the stocker and feeder cattle and superintends the bookkeeping end of the business. Mr. Rutherford sells the butcher stuff and looks after the yarding of the cattle in the morning. He gets out about 6 o'clock in the morning. Mr. Dempsey and I get out to the yards [fol. 889] about 7. We hire a hog salesman who has been with us ten years. Mr. Dempsey came with the firm of Harrington and Poole in 1914, and entered the employ as a stenographer and bookkeeper. He got into the selling end of the business by going down into the yards and helping to yard and sort cattle, and spending some time with the rest of us selling cattle. Mr. Rutherford came to the yards the same year I did and worked as a yardman for 8 or 9 years. These gentlemen, in my opinion, are competent cattle salesmen.

The sheep consigned to us are sold by Hinie Klecker, that does an exclusive sheep business. We do not have a sheep salesman. I send out a market card each week. I own two horses which are used in the business.

On Schedule No. 2 of Government Exhibit 14-48 shown is the amount of $4200 which is drawn by me as owner No. 1. That is simply a drawing account in order to have something with which to pay expenses. At the end of the year, any surplus is divided. That is true of the other two owners. I would say that the different grades and classes of livestock shown on Respondents Exhibit 34 is of importance in determining the price of those cattle. I assisted in the preparation of this exhibit. Beef steers of all the breeds and descriptions shown on this exhibit come to the Kansas City market. There is a classification as to kind which affects the value. The same is true with respect to the classification as to origin. There is also a difference as to the finish. The other classifications with respect to age, quality, condition, weight and uniformity enter into the [fol. 890] determination of value. The condition is shown on the following sheet with respect to slaughter cattle and butcher stock affecting the value. The same is true of the next sheet with respect to stockers, and the following sheet with respect to feeders. The same is true with respect to

the next sheet relating to breeding cattle. During the course of the year there is received at the Kansas City market cattle and calves representing every classification contained in the five sheets of Respondents Exhibit No. 34.

Whereupon Respondents Exhibit No. 34 was received in evidence.

Whereupon Respondents' Exhibit No. 32 was received in evidence.

I did not personally make these calculations that appear in the first two pages of Exhibit 34. It might be that a Galloway grasser would come from any one of the States mentioned, varying in condition, and his value would vary in some degree in accordance with the State from which he came.

Cross examination:

I do not think that our firm has ever suffered a loss by reason of mortgage and stolen livestock. We have had some awful narrow escapes. We are constantly on the alert to watch for those things.

Whereupon the witness was excused.

HENRY F. ELROD, a witness called by the respondents, [fol. 891] after being duly sworn, testified as follows:

I am connected with the Ryan Robinson Commission Company. I came to the yards on May 1, 1900. I shipped to the market a number of years before I came to the market to go to work. For five years before I came to the market I was on the market almost every week. I have been president of the Exchange since May, 1930. Previous to that I was a director for six years. I have been selling fat steers for about 20 years, and have been a member of the Exchange about 27 years. I think probably the fat steer salesmen come in competition with the older buyers for the packers. I don't believe I could say that the fat steers were any harder to sell them the butcher stuff. The first three days of the week I try to get to the yards around 6:30. The first thing I do is to sort my cattle with the assistance of a yardman. When we get through sorting we

divide our cattle up and water them, putting eight or ten cattle to the trough. When we get them watered we begin to look for buyers for the different classes of cattle. When we get them sold we put them over the scale. I mark all the tickets of the cattle I sell myself. We have our boys in and out of the building several times during the day to see what other markets are doing.

My firm gets a wide variety of cattle as respects the price at which they sell and the breed, age, weight quality and condition. I have examined Respondents' Exhibit No. 34, and I believe it states with a fair degree of accuracy the [fol. 892] variations which affect market prices as to cattle. We gain our information along that line practically all in the country. I go out in the country to see our customers. We are often able to advise with the customer in regard to market conditions as to whether he should hold his cattle longer or ship them at once. It is of value to a salesman to be acquainted with the particular cattle before they come to market.

The value of this country work to the salesman and to the customer has increased very much. We do pasture leasing work. I think we are of very great service to our customers in getting them the right location where there is plenty of grass and water.

The Ryan Robinson Commission Company is a corporation, and all of the owners of the stock of that corporation are actively engaged in the commission business. The names of the stockholders are F. G. Robinson, George W. Tamm, H. C. Bates, F. L. Merchant, J. B. Ryan, and Henry F. Elrod. F. G. Robinson has been our manager and has been connected with the livestock commission business about 33 years. Mr. J. B. Ryan and George W. Tamm are the other cattle salesmen. H. C. Bates and Forest Merchant are office men. The amounts shown opposite the different numbers representing these men in the audit are a fixed salary and have been for a number of years. If any balance is left after the fixed amount is withdrawn, that would be divided as dividends to the different owners. These amounts were fixed by the owners themselves. Mr. Ryan has been a salesman on the Kansas City market about 26 years. Mr. Tamm has been an employee of the present [fol. 893] firm for 35 or 36 years as a cattle salesman and as a yardman. Mr. Bates came to our firm about 32 years

ago, and Mr. Merchant came to us about 15 years ago. Our firm does not maintain a sheep salesman. Mr. Klecker, who has a regular sheep business, sells our sheep. Mr. B. R. Bridgeford handles our hogs. He has been in this line of work around 35 years. We sustained a loss in 1929 on our livestock commission business. Our firm owns one membership and each one of the five own their memberships individually. The bookkeeper pays the exchange insurance and charges it up to the individuals. My firm does not carry employer's compensation insurance. We do carry mortgage and theft insurance. We sustained quite a loss in that respect about ten years ago, and we have carried it since then. The loss was $2,000 but we regained a part of them from another commission firm. We have had several narrow escapes but no actual losses since then.

I have examined Respondents' Exhibit No. 29. I consider the methods and practices outlined in that exhibit as typical of the operation of my business. I do not believe it would be possible for us to handle our business if we did not have these methods and practices. I don't think I could say that the additions to the number of agencies has benefitted the patrons of the market in the least. I don't believe that adding non-member agencies has bettered the conditions of the patrons to the market. I think competition between agencies has a great deal of effect on the character of service rendered. It tends to improve the serv-
[fol. 894] ice.

Cross-examination:

When I first came with Ryan Robinson I assisted in selling butcher stuff. When I first came with the firm it was operating under the name of Patterson, Ryan and Keeney. Mr. Keeney passed away in 1903 and the name was changed a few years later to Ryan Robinson. I believe I had some stock in the firm before the name was changed. F. G. Robinson and I hold 22½ shares each. R. W. Ryan has just one share and the balance of 71 shares is held by the others in about equal proportion. The salaries of the owners are not determined in any way by the amount of stock with each person owns in the firm. Mr. Ryan bought his horse about 4 months ago for $125. I make my trips out to the country in automobile and train. On these trips I go to our customer's feed yards and advise with them in regard to their livestock.

I do not think that every commission firm on the Kansas City market uses in its business every form contained in Respondent's Exhibit No. 29. In looking this exhibit over I think I see some blanks that are not used in our office. With respect to the exhibit covering the grades and quality of sheep, hogs and cattle, I would say that I was present when those figures were made but as far as going into the detail of that many species, it would be beyond any ordinary salesman to pick them out probably. I have no reason to dispute the figure, but I don't believe it would be in the [fol. 895] power of any ordinary salesman to sort his cattle, hogs and sheep into that many species, even in the course of a good long time.

Redirect examination:

I would say that the work involved in connection with country commissions incurs very little extra expense, as ordinarily we would be showing the buyer the cattle in the country on a trip that we might be making anyway. This business generally relates to comparatively large bunches of cattle. It is revenue that we like to secure as it comes to us with a relatively small amount of expense. It helped us out wonderfully in 1929. We handled livestock that comes through the Prospect and Morris feed yards. Customers shipping quite a distance consider that they can rest their cattle at the feed yard over night and one day, and in that way get a better fill on the market. This is a growing practice. Some of the members of our firm practically always visit the feed yard if there are cattle there over Sunday, or any other time if they are held there any length of time at all. We go to the feed yards in automobiles. We practically always take the customers out there. No charge is made for the service rendered in looking after the cattle in the feed yards. When cattle are held any length of time we make frequent trips to see that they are properly cared for. We have had it happen that the owner has sold his livestock direct at the feed yards and they have moved on to other stockyards instead of to the Kansas [fol. 896] City market. I don't consider the salaries set opposite the names of the owners of our firm as indicative of fair compensation for the services rendered in 1929.

Whereupon the witness was excused.